

(28,669)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 714.

BASS, RATCLIFF & GRETTON, LIMITED, PLAINTIFF IN
ERROR,

vs.

STATE TAX COMMISSION.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

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1 Supreme Court, Appellate Division, Third Department.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of BASS,
RATCLIFF & GRETTON, LIMITED, Relator,

against

STATE TAX COMMISSION, Respondent.

Statement under Rule 41.

This proceeding was commenced by the filing of a notice and petition for writ to issue on or about August 10, 1920, upon which petition an order was entered directing issuance of writ on August 30, 1920. Thereupon, on August 30, 1920, the writ of certiorari was duly issued.

Respondent, on October 10, 1920, served and filed its return to said writ.

Relator appeared by Olney & Comstock and respondent by Hon. Charles D. Newton, Attorney General of the State of New York. There has been no change of parties or of attorneys.

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Writ of Certicari.

The People of the State of New York on the Relation of Bass, Ratcliff & Gretton, Limited, to the State Tax Commission:

Whereas, we have been informed by the petition of Bass, Ratcliff & Gretton, Limited, verified the 10th day of August, 1920, as more fully appears in said petition, that said petitioner is a corporation organized under the laws of England, and, on the 3rd day of February, 1898, was duly authorized to conduct business within the State of New York, and ceased so to conduct its business within this State on the 6th day of November, 1918, and

That heretofore and on or about the 25th day of February, 1919, the State Tax Commission assessed a tax against the said petitioner in the sum of Eight hundred twenty-six and 14/100 (\$826.14) Dollars, under the provisions of Article 9A of the Tax Law, and

That thereafter and on or about the 26th day of September, 1919, your petitioner filed a formal application with the State Tax Commission for a revision of the taxes so assessed against it, and

That thereafter and on or about the 28th day of July, 1920, the said State Tax Commission, after granting the request of the application of the said Petitioner for a rehearing and revision of said tax, rendered its determination in writing, affirming the said

3 original assessment of tax against the said Petitioner in the sum of Eight hundred twenty-six and 14/100 (\$826.14) Dollars, and served a copy of the said determination upon Petitioner by mail, copy of said determination being received by said Petitioner on or about the 29th day of July, 1920, and

That for the said taxable period for which the said tax was so assessed against the said Petitioner by the said State Tax Commission, the said Petitioner had no taxable income and no income upon which it paid tax to the United States Government, and was not engaged in business in the State of New York for the period for which the tax was assessed and ceased to do business on or about the sixth day of November, 1918, and

That said Petitioner has paid the said tax under protest to the State Tax Commission, and has filed with said Commission a bond and undertaking required by law, and

That by reason of the foregoing matters and things injustice has been done to said Bass, Ratcliff & Gretton, Limited, in that said determination and assessment of the said Tax Commission is erroneous and inequitable for the reasons that the law under which said tax is assessed is in violation of the constitution of the United States and of the constitution of the State of New York, and in that, among other things, it deprives the persons so taxed of their property without due process of law and without just compensation; that it denies to said persons the equal protection of the laws and attempts

4 illegally to impose a tax upon a tax imposed and assessed by the Government of the United States and imposes an unequal tax and illegally discriminates against certain of the persons so taxed and in favor of certain other persons so taxed; and upon the further ground that inasmuch as your Petitioner is a foreign corporation organized under the laws of England, that the said tax is in violation of the comity of nations; that the assessment and determination of the State Tax Commission fails to give consideration to the business and property of the corporation not employed in the United States or the State of New York, and upon the further ground that the said assessment and determination and the said tax is computed upon a part of the income of your petitioner represented by its earnings made outside of the United States of America and is, therefore, in contravention of the directions and provisions of the Act in question in that the said tax and assessment and determination are not based upon the amount of income reported to the Federal Government of the United States under the Income Tax Law of the United States, and are not computed upon the basis of your petitioner's net income, upon which income your petitioner was required to pay a tax to the United States, and

That said Petitioner, among other things, prays that a writ of certiorari issue out of this Court to review the said proceedings had by and the determination of the said State Tax Commission to the end that the error, injustice and inequality above alleged may be corrected and that the said determination of the said State Tax Commission may be corrected and that the said determination of

5 the said State Tax Commission may be reviewed and reversed and the errors aforesaid corrected in accordance with law, and the said assessment vacated and set aside and the tax paid by said Petitioner in the sum of \$826.14 be refunded;

Now, we being willing for said causes to be certified of your proceedings as such State Tax Commission in making said assessment,

determination and tax, determination and affirming the tax against the said Petitioner in the sum of \$826.14, and of all things relating thereto, do command you that within twenty days after the service of this writ upon you, you certify and return to us in the office of the Clerk of the County of Albany, in the City of Albany, to the end that your said determination, assessment and action may be reviewed and corrected on the merits by this Court and may be reversed and the errors aforesaid corrected in accordance with law:

(1) All and singular the proceedings had by the said State Tax Commission relating to the assessment and determination of the tax against it by the State Tax Commission, based on its business for the year ending June 30, 1918, under Article 9-A of the Tax Law, Section 214.

(2) All and singular the papers, affidavits and evidence submitted by your Petitioner and filed with the said State Tax Commission, together with all other papers, affidavits, evidence, data, writings, memoranda, matters and information, if any, before the State Tax Commission and considered by it, and upon which it arrived at its determination and conclusion as to said assessment and tax, or if there be no such other papers, affidavits, evidence or other data or information, a statement to that effect.

(3) A statement of the method by which the said State Tax Commission made its determination and assessment, and the
6 grounds thereof, and the bases or principles upon which the same were made.

(4) That the said State Tax Commission be directed to serve a copy of its return upon Olney & Comstock, attorneys for your Petitioner, within twenty days after service of a writ upon said State Tax Commission, and that your Petitioner have such other and further order and relief as to this Court may seem just and proper.

Witness, the Honorable Philip J. McCook, one of the Justices of the Supreme Court of the State of New York, at the County Court House, Borough of Manhattan, City of New York, on the 30th day of August, 1920.

By the Court,

[Seal New York.]

WM. F. SCHNEIDER,

Clerk.

OLNEY & COMSTOCK,

Attorneys for Relator.

Office and Post Office Address,

68 William Street,

Borough of Manhattan,

City of New York.

The foregoing Writ is allowed this 30th day of August, 1920.

PHILIP J. MCCOOK,

Justice of the Supreme Court of State of New York.

7 To the State Tax Commission.

GENTLEMEN:

Please take notice that a Writ of Certiorari, of which the foregoing is a copy, has been duly granted and that the original now exhibited to you will be forthwith filed in the office of the Clerk of the County of Albany.

Dated, Albany, New York, August —, 1920.

OLNEY & COMSTOCK,
Attorneys for Relator.

Office and Post Office Address,
68 William Street,
Borough of Manhattan,
New York City.

8 *Order Directing Writ to Issue.*

At a Special Term of the Supreme Court of the State of New York, Part I Thereof, Held in and for the County of New York, at the County Court House, Borough of Manhattan, City of New York, on the 30th Day of August, 1920.

Present: Honorable Philip J. McCook, Justice.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of BASS,
RATCLIFF & GRETTON, LIMITED, Relator,

against

STATE TAX COMMISSION, Respondent.

An Application having regularly come on to be heard before me on the 24th day of August, 1920, for a writ of certiorari on the petition of Bass, Ratcliff & Gretton, Limited, verified the 10th day of August, 1920, and upon reading and filing the said petition and the notice of application therefor, and upon due proof of service of said notice of application and said petition on the State Tax Commission, and no one appearing in opposition thereto, now, on motion of Olney & Comstock, attorneys for the Relator, it is

Ordered that a Writ of Certiorari as prayed for in said petition be allowed and issued, directed to the State Tax Commission,
9 and that said Writ be allowed, signed and sealed by the Clerk of this Court in and for the County of New York, and be returnable within twenty days after service thereof on the said State Tax Commission at the office of the Clerk of the Supreme Court in and for the County of Albany, City of Albany, State of New York.

Enter in Albany County.

P. J. MCCOOK,
J. S. C.

Notice of Motion for Writ of Certiorari.

Supreme Court, State of New York, County of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of BASS,
RATCLIFF & GRETTON, LIMITED, Relator,

against

STATE TAX COMMISSION, Respondent.

SIRS:

Please take notice that the undersigned, by Olney & Comstock,
its attorneys, on the annexed petition verified the 10th day of
10 August, 1920, will move this Court, at Special Term, Part I
thereof, to be held in and for the County of New York in the
County Court House, Borough of Manhattan, City of New York, on
the 24th day of August, 1920, at 10.15 o'clock in the forenoon of said
day, or as soon thereafter as counsel can be heard, for an Order di-
recting the issuance of a Writ of Certiorari and for a Writ of Cer-
tiorari in accordance with the prayer of said petition, directed to you,
commanding that you, the said State Tax Commission, certify and
return to this Court, at the office of the Clerk of the County of
Albany, in the City of Albany, to the end that said assessment and
determination and action of said State Tax Commission may be re-
viewed and corrected on the merits by this Court, and that the said
assessment and determination of the said State Tax Commission may
be reversed and the errors aforesaid corrected in accordance with the
law:

(1) All and singular the proceedings had by the said State Tax
Commission relating to the assessment and determination of the tax
against it by the State Tax Commission, based on its business for the
year ending June 30, 1918, under Article 9-A of the Tax Law,
Section 214.

(2) All and singular the papers, affidavits and evidence submitted
by your petitioner and filed with the said State Tax Commission,
together with all other papers, affidavits, evidence, data, writings,
memoranda, matters and information, if any, before the State Tax
Commission and considered by it, and upon which it arrived at its
determination and conclusion as to said assessment and tax, or if
there be no such other papers, affidavits, evidence or other data or
information, a statement to that effect.

11 (3) A statement of the method by which the said State
Tax Commission made its determination and assessment, and
the grounds thereof, and the bases or principles upon which the same
was made.

(4) That the said State Tax Commission be directed to serve a
copy of its return upon Olney & Comstock, attorneys for your pe-
titioner, within twenty days after service of a writ upon said State

Tax Commission, and that your petitioner have such other and further order and relief as to this Court may seem just and proper.

BASS, RATCLIFF & GRETTON,
LIMITED, *Petitioner*,
By OLNEY & COMSTOCK,
Attorneys.

To:
State Tax Commission.
Attorney-General.

12

Petition for Writ.

Supreme Court, State of New York, County of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of BASS,
RATCLIFF & GRETON, LIMITED, Relator,

against

STATE TAX COMMISSION, Respondent.

To the Supreme Court of the State of New York:

The petition of Bass, Ratcliff & Gretton, Limited, by Olney & Comstock, its attorneys, respectfully shows:

1st. That your petitioner was at all the times hereinafter mentioned, and still is, a corporation organized and existing under the laws of England, and that it was duly authorized on the 3rd day of February, 1898, to do business in this State, and fully complied with all the provisions of Section 15 of the General Corporation Law and duly paid all taxes due by it to be paid under Section 182 and under Article 9-A of the Tax Law. That said Company ceased to do business within the State of New York on the 6th day of November, 1918, and formally surrendered its certificate of authority to do business in this State by instrument executed the 28th day of January, 1920.

13 2nd. That the State Tax Commission was at the time of the hearing and decision hereinafter mentioned, and still is, a body duly appointed, organized and existing under the laws of this State and duly authorized to entertain before it the proceedings hereinafter mentioned.

3rd. That heretofore and on or about the 8th day of August, 1918, your petitioner filed with the State Tax Commission a franchise tax report under Article 9-A of the Tax Law, copy of which is hereto annexed, made part hereof and marked Exhibit A. That thereafter and on or about the 7th day of February, 1919, the State Tax Commission wrote to petitioner directing its attention to the necessity of furnishing information regarding its entire net income, a copy of which letter is hereto annexed, made part hereof and marked Exhibit B. That thereafter and on or about September 5,

1919, your petitioner filed with the State Tax Commission an amended report, copy of which is hereto annexed, made part hereof and marked Exhibit C, and protest against making said return, copy of which is hereto annexed, made part hereof and marked Exhibit D, together with letter from counsel for petitioner under date of September 5, 1919, copy of which is hereto annexed, made part hereof and marked Exhibit E.

4th. That thereafter and on or about the 25th day of February, 1919, the State Tax Commission assessed a tax against your petitioner in the sum of \$826.14 and rendered bill to your petitioner for the same. That on or about the 26th day of September, 1919, your petitioner filed a formal application with the State Tax Commission

for a revision of the taxes assessed against it, a copy of which application is hereto annexed, made part hereof and marked Exhibit F, and also communicated through counsel on or

about the same date with the State Tax Commission by letter dated September 26, 1919, copy of which is hereto annexed, made part hereof and marked Exhibit G. That thereafter and under date of October 11, 1919, the State Tax Commission communicated with your petitioner acknowledging receipt of the application for revision of tax and advising that hearing on such application would be granted, a copy of which letter is hereto annexed, made part hereof and marked Exhibit H. That thereafter and on or about the 18th day of October, 1919, the said tax assessed against your petitioner in the sum of \$826.14 was paid by petitioner, under protest upon the grounds set forth therein, said protest being addressed to the State Tax Department of New York and to the State Comptroller of Albany, New York, copy of which protest is hereto annexed, made part hereof and marked Exhibit I. That thereafter and on or about the 13th day of November, 1919, there was filed by your petitioner with the State Tax Commission an affidavit and statement showing that your petitioner did not intend to do business in the State of New York for the tax year beginning November 1, 1919, accompanied by a letter from counsel of your petitioner under date of November 13, 1919, copies of which said statement and affidavit are hereto attached, made part hereof and marked Exhibit J, and copy of said letter being hereto annexed, made part hereof and marked Exhibit K. In

reply thereto the State Tax Commission wrote to your petitioner under date of December 8, 1919, copy of which letter is hereto annexed, made part hereof and marked Exhibit L. In reply your petitioner wrote the State Tax Commission, through counsel,

15 under date of December 10, 1919, inquiring as to whether or not the State Tax Commission required evidence that your petitioner's certificate of authority to do business in this State had been revoked before it would entertain an affidavit showing that the Company no longer intended to do business in this State, a copy of which letter is hereto attached, made part hereof and marked Exhibit M. That in reply to this letter of December 10, 1919 (Exhibit M), State Tax Department wrote under date of December 18, 1919, that if the affidavit suggested was filed with the Department, no fran-

chise tax would be assessed, copy of which letter is hereto attached, made part hereof and marked Exhibit N. That thereafter and on or about the 24th day of December, 1919, your petitioner filed with the State Tax Commission an affidavit drawn in accordance with the suggestion of the State Tax Department's letter of December 8, 1919 (Exhibit L), accompanied by letter from counsel under date of December 24, 1919, which said affidavit is hereto annexed and made part hereof and marked Exhibit O, and which said letter is hereto annexed, made part hereof and marked Exhibit P. That the enclosure referred to in said letter, being a letter to the Secretary of State, is also annexed hereto and made part hereof and marked Exhibit Q. That thereafter several communications passed between your petitioner, through counsel, and the State Tax Commission, requesting a date for hearing on its application for revision of tax, and that thereafter hearing was set for and held before the State Tax Commission on the 19th day of May, 1920, and that thereafter, in reply to a question asked at the time of the hearing, your petitioner wrote the State Tax Commission, through counsel, under date of

16 May 21, 1920, advising that there were no local assessments against it, a copy of which letter is hereto attached, made part hereof and marked Exhibit R. That in the meantime, and on or about the 18th day of February, 1920, there was filed with the Secretary of State, State of New York, a formal certificate of surrender of authority to your petitioner to do business in this State and the original certificate of authority was returned.

5th. That thereafter the State Tax Commission proceeded to make its determination upon the application of petitioner for revision of the tax assessed against it, and on or about the 28th day of July, 1920, made such determination in writing affirming such original assessment of tax in the sum of \$826.14. A copy of said determination is hereto attached, made part hereof and marked Exhibit S, and the letter accompanying said determination from the State Tax Department is also hereto attached, made part hereof and marked Exhibit T. Said determination and letter (Exhibits S and T) were received by your petitioner on or about the 29th day of July, 1920. Thirty days have not elapsed since said date.

6th. Your petitioner further shows and alleges that the assessment of the said tax and determination by the said State Tax Commission, as hereinabove set forth, is erroneous and inequitable, for the reasons that the law under which said tax is assessed is in violation of the Constitution of the United States and the Constitution of the State of New York, and in that, among other things, it deprives the persons so taxed of their property without due process of law and without just compensation; that it denies to said persons the equal protection of the laws and attempts illegally to impose a tax upon a tax imposed and assessed by the Government of the United States, and imposes an unequal tax and illegally discriminates against certain of the persons so taxed and in favor of certain other persons so taxed; and upon the further ground that inas-

much as your petitioner is a foreign corporation organized under the laws of England, that the said tax is in violation of the comity of nations; that the assessment and determination of the State Tax Commission fails to give consideration to the business and property of the corporation not employed in the United States or the State of New York, and upon the further ground that the said assessment and determination and the said tax is computed upon a part of the income of your petitioner represented by its earnings made outside of the United States of America and is, therefore, in contravention of the directions and provisions of the Act in question in that the said tax and assessment and determination are not based upon the amount of income reported to the Federal Government of the United States under the Income Tax Law of the United States, and are not computed upon the basis of your petitioner's net income, upon which income your petitioner was required to pay a tax to the United States.

Wherefore, your petitioner prays that a writ of certiorari may be issued and allowed by this Court, directed to the State Tax Commission, commanding it to certify and return to this Court, in the office of the Clerk of the County of Albany in the City of Albany, to the end that said assessment and determination and action of said State Tax Commission may be reviewed and corrected on the merits by this Court, and that the said assessment and determination of the said State Tax Commission may be reversed and the errors afore-
18 said corrected in accordance with the law:

(1) All and singular the proceedings had by the said State Tax Commission relating to the assessment and determination of the tax against it by the State Tax Commission, based on its business for the year ending June 30, 1918, under Article 9-A of the Tax Law, Section 214.

(2) All and singular the papers, affidavits and evidence submitted by your petitioner and filed with the said State Tax Commission, together with all other papers, affidavits, evidence, data, writings, memoranda, matters and information, if any, before the State Tax Commission and considered by it, and upon which it arrived at its determination and conclusion as to said assessment and tax, or if there be no such other papers, affidavits, evidence or other data or information, a statement to that effect.

(3) A statement of the method by which the said State Tax Commission made its determination and assessment, and the grounds thereof, and the bases or principles upon which the same was made.

(4) That the said State Tax Commission be directed to serve a copy of its return upon Olney & Comstock, attorneys for your petitioner, within twenty days after service of a writ upon said State Tax Commission, and that your petitioner have such other and further order and relief as to this Court may seem just and proper.

- 19 No previous application for this or similar relief has heretofore been made. Bond required by law has been filed.
Dated, New York, August 10, 1920.

(S.) BASS, RATCLIFF & GRETTON,
LIMITED,
By CHARLES H. TAYLOR,
Petitioner.

OLNEY & COMSTOCK,
Attorneys for Relator.

Office and Post Office Address,
68 William Street,
Borough of Manhattan,
City of New York,
New York.

- 20 STATE OF NEW YORK,
County of New York, ss:

Charles H. Taylor, being duly sworn, deposes and says that he is the agent and attorney-in-fact (for the purpose of executing and verifying this Petition) of the Petitioner in this action; that he has read the foregoing Petition and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

This verification is made by deponent and not by Bass, Ratcliff & Gretton, Limited, for the reason that Bass, Ratcliff & Gretton, Limited, is a foreign corporation, of which deponent is an officer, to wit, its agent and attorney-in-fact. That all the material allegations of this Petition are within deponent's knowledge.

(S.) CHARLES H. TAYLOR.

Sworn to before me this 10th day of August, 1920.

(S.) GEORGE F. BENTLEY,
[Notarial Seal.] *Notary Public (102), New York Co.*

- 21 EXHIBIT A.

Report to State Tax Commission.

1918.

State of New York.

Taxation of Corporate Franchises under Article 9-a of the Tax Law
for the Tax Year Beginning November 1, 1918.

This report is due July 1, 1918, or within thirty days after filing
report with the United States Treasury Department.
File with State Tax Department, Albany, N. Y.

As American Manager of the British Corporation of Bass, Ratcliff & Gretton, Limited, I make the following report of such company for the fiscal year ending June 30, 1918, pursuant to Article 9-a of the Tax Law:

(1) Organized Jan. 13, 1888, under the Laws of Great Britain.

(2) Began business in New York, March, 1897.

(3) Issued capital stock, \$13,600,000.

(If organized with shares without par value, insert the amount of paid-in capital.)

(4) Amount of indebtedness at end of year, \$ nil.

(5) Net income for the fiscal year ending June 30, 1918, as reported to the United States Treasury Department, None.

Corporations organized under the laws of foreign countries should return their entire net income—Unable to ascertain.

22 (6) If the amount reported above is not correct, state the amount claimed to be correct.

(7) Nature of business and how transacted—Importation and sales of ale.

(8) Place, street and number where such business is conducted—90 Warren Street, New York City.

(9) Where will mail reach the company? 90 Warren Street, New York City.

(10) State the city or town, street number and state where this company maintained any store, warehouse, factory or other place of business outside the State of New York—115 West Grand Ave., Chicago, Ill., also has principal office at Burton-on-Trent, England, and many other places in different parts of the world.

(11) Any corporation taxable hereunder may omit from this report the segregation of assets on this page only by signing the following consent:

I am authorized by the Board of Directors of this corporation to consent and I do hereby consent that said corporation be taxed upon its entire net income.

NOTE.—The foregoing lines commencing (11) "any corporation taxable hereunder, etc.," and ending "taxed upon its entire net income," were all struck out in the original report filed.

CHARLES H. TAYLOR,

American Manager.

(Official title.)

Do not sign consent unless taxable by the State of New York on entire income.

23 Total Segregated Assets Wherever Located in U. S. of
America.

Average monthly value of bills and accounts receivable for—

(a) Personal property manufactured by it.....	\$21,534.15
(b) Personal property sold by the corporation from merchandise owned by it at the time of accept- ance of order but not manufactured by it....	None.
(c) Services performed, based on orders received at offices maintained by the corporation, exclud- ing bills and accounts receivable on orders filled from a stock of merchandise or other property maintained by the corporation.....	None.
Average monthly value of all real property wherever located (actual value).....	None.
Average monthly value of all its tangible personal property wherever located (actual value)....	24,829.23

Total 24,829.23

Average total actual value of shares of stocks of other
corporations owned by this corporation.....

24 Assets Segregated to New York State Only.

Average monthly value of bills and accounts receivable for—

(a) Personal property manufactured by it within this state
(b) Personal property sold by it from merchandise owned by it and located in this state at the time of acceptance of the order, but not manufac- tured by it within this state.....	20,449.29
(c) Services performed, based on orders received at offices maintained by the corporation within this state, excluding bills and accounts receiv- able arising from sales made from a stock of merchandise or other property at a place of business maintained by the corporation within this state
Average monthly value of its real property within this state as detailed in this report (actual value)
Average monthly value of its tangible personal prop- erty in New York State as detailed in this re- port (actual value).....	23,668.33

Total 23,668.33

Average total actual value of shares of stocks of other
corporations owned by it and allocated to this
State by rule below.....

25

Instruction.

If the company's entire real and personal property in this state is in one city, or in one town outside a city or incorporated village, the schedules below need not be made, but the name of the city or town, and of the county where located must be entered in panel 3.

City or Town, New York, New York County. 3.

Affidavit of President, Vice President, Secretary or Treasurer.

On this 2nd day of August, A. D. 1918, personally appeared before me, a Notary Public in and for the County of New York, C. H. Taylor, American Manager of the above named company, who, being duly sworn according to law, did depose and say that the foregoing report is just, true and correct and that it includes a true statement of the annual net income of said company for the year.

CHARLES H. TAYLOR,

American Manager.

(Official title.)

Sworn to before me the day and year aforesaid.

[Notarial Seal.]

GEORGE F. BENTLEY,

Notary Public (102), New York County.

26

EXHIBIT B.

State of New York,

Tax Department,

Albany.

State Tax Commission.

Walter H. Knapp, President.

Ralph W. Thomas.

John J. Merrill.

Corporation Tax Bureau.

Newell W. Canfield,

Acting Deputy Commissioner.

Bass, Ratcliff & Gretton, Ltd.,
90 Warren Street,
New York City.

February 7, 1919.

GENTLEMEN:

The report of this company under Article 9-A of the tax law for the tax year beginning November 1, 1918, fails to include the necessary information upon which to base the franchise tax.

An additional blank is herewith enclosed, and your attention is directed to the necessity of furnishing the information required regarding the entire net income of corporations organized under the laws of foreign countries, and unless the consent of the company is given to taxation upon such entire net income, the segregation of assets should be included.

Respectfully yours,

(S.)

STATE TAX DEPARTMENT,
By N. W. CANFIELD,
Deputy Commissioner.

N. W. C./D.
Enc.

27

EXHIBIT C.

Amended Report.

Amending Report Hereto and on August 8, 1918, Filed.

File with State Tax Department, Albany, N. Y.

Taxation of Corporate Franchises under Article 9-a of the Tax Law for the Tax Year Beginning November 1, 1919.

This report is due July 1, 1919, or within thirty days after filing report with the United States Treasury Department.

As American Manager of the British Corporation of Bass, Ratcliff & Gretton, Limited, I make the following report of such company for the year ending June 30th, 1918, pursuant to Article 9-a of the Tax Law. (Date inserted above must be the same as given in answer to (7) below.)

- (1) Organized Jan. 13, 1888, under the Laws of Great Britain.
- (2) Began business in New York March, 1897.
- (3) If not incorporated under laws of New York, has it been authorized to do business in New York State? —.
- (4) Authorized capital stock, \$—.
- (5) Issued capital stock, \$13,600,000.
- (6) Amount of indebtedness at end of fiscal year, \$12,698,200.00
- (7) Net income for the year ending June 30th, 1918, reported to United States Treasury Department—None.

NOTE.—The date used must be that of the last period ending on or before June 30, 1919, for which a report was made to the Federal government.

- 28 (8) If a corporation is not organized under the laws of any state within the United States it should return its entire net income, wherever earned, \$2,185,600.00.

(9) If the amount reported above is inaccurate, state the amount claimed to be correct, \$—.

(10) Nature of business and how transacted—Importation and sales of ale.

(11) Place, street and number where such business is conducted—90 Warren St., New York City.

(12) Where will mail reach the company—90 Warren Street, New York City.

(13) State the city or town, street number and state where this company maintained any store, warehouse, factory or other place of business outside the State of New York—115 West Grand Ave., Chicago, Ill., also has principal office at Burton-on-Trent, England, and many other places in different parts of the world.

(14) Any corporation taxable hereunder may omit from this report the segregation of assets on this page only by signing the following consent:

I am authorized by the Board of Directors of this corporation to consent and I do hereby consent that said corporation be taxed upon its entire net income at $4\frac{1}{2}\%$ or upon its entire issued capital stock at one mill on the dollar, as provided by law.

29 NOTE.—The foregoing lines commencing (14) "any corporation taxable hereunder, etc." and ending "as provided by law," were all struck out in the original report filed.

_____,
_____.
(Official title.)

Do not sign consent unless taxable by the State of New York on entire income or entire issued capital stock.

Total Segregated Assets Wherever Located.

- | | |
|---|--------------|
| (a) Average monthly value of bills and accounts receivable for personal property manufactured by it | \$321,625.00 |
| (b) Average monthly value of bills and accounts receivable for personal property sold by the corporation from merchandise owned by it at the time of acceptance of order but not manufactured by it..... | None. |
| (c) Average monthly value of bills and accounts receivable for services performed, based on orders received at offices maintained by the corporation, excluding bills and accounts receivable on orders filled from a stock of merchandise or other property maintained by the corporation. | None. |

Average monthly value of all its real property wherever located (actual value) 785,675.00

30

Average monthly value of all its tangible personal property wherever located (actual value) 2,105,105.00

Total

Average total actual value of shares of stocks of other corporations owned by this corporation 845,195.00

Assets Segregated to New York State Only.

(a) Average monthly value of bills and accounts receivable for personal property manufactured by it within the state None.

(b) Average monthly value of bills and accounts receivable for personal property sold by it from merchandise owned by it and located in this state at the time of acceptance of the order, but not manufactured by it within the state 20,449.29

(c) Average monthly value of bills and accounts receivable for services performed, based on orders received at offices maintained by the corporation within this state, excluding bills and accounts receivable arising from sales made from a stock of merchandise or other property at a place of business maintained by the corporations within this state None.

Average monthly value of its real property within this State as detailed in this report (actual value) None.

31

Average monthly value of its tangible personal property in New York State as detailed in this report (actual value) 23,668.33

Total

Average total actual value of shares of stocks of other corporations owned by it and allocated to this state by rule below

City or Town, —, New York County. 3.

Instruction.

If the company's entire real and tangible personal property in this state is in one city, or in one town outside a city or incorporated

village, the schedules below need not be made, but the name of the city or town, and of the county where located must be entered in panel 3.

32 *Affidavit of President, Vice President, Secretary or Treasurer.*

STATE OF NEW YORK,
County of New York, ss:

On this 5th day of September, A. D. 1919, personally appeared before me, a Notary Public in and for the County of New York, Charles H. Taylor of the above named company, who, being duly sworn according to law, did depose and say that the foregoing report is just, true and correct and that it includes a true statement of the annual net income of said company for the year.

(Signed)

CHARLES H. TAYLOR,
American Manager.
(Official title.)

Sworn to before me the day and year aforesaid.

[SEAL.]

GEORGE F. BENTLEY,
Notary Public, 102, New York Co.

33

EXHIBIT D.

We hereby protest against the making of this return and any assessment for taxes and any attempt to collect taxes under any of the provisions of Article 9-A of the Tax Law, Chapter Sixty of the Consolidated Laws of the State of New York, being Chapter 62 of Laws of the State of New York for the year 1909, as amended, said Article 9-A being added thereto by Chapter 726 of the Laws of 1917 and amended by Chapter 417 of the Laws of 1918, upon the grounds, among others, that such law is in violation of the Constitution of the United States and the Constitution of the State of New York in that, among other things, it deprives the persons so taxed of their property without due process of law and without just compensation, and denies to such persons the equal protection of the laws and that it attempts illegally to impose a tax upon a tax imposed and assessed by the Government of the United States and imposes an unequal tax and illegally discriminates against certain of the persons so taxed and in favor of certain other persons so taxed; and also upon the further ground that inasmuch as this corporation is a foreign corporation, organized under the Laws of Great Britain, that it is in violation of the comity of nations; that consideration should be given to the business and property of the corporation not in or employed in the United States or the State of New York.

Dated, September 5th, 1919.

(Signed)

BASS, RATCLIFF & GRETTON,
LTD.,
By CHARLES H. TAYLOR,
American Manager.

34

EXHIBIT E.

September 5, 1919.

State Tax Department.

DEAR SIRs:

In the matter of the report of Bass, Ratcliff & Gretton, a British corporation, for the fiscal year ending June 30, 1918, in answer to yours of February 7, 1919, we are enclosing an amended report furnishing the information as to its income everywhere and as to its assets everywhere.

The figures in the report are based upon a value of the English pound sterling at \$5 American money.

Yours respectfully,

(S.)

OLNEY & COMSTOCK.

G. C. C./W. V. K.
(Enclosure.)

35

EXHIBIT F.

State of New York,

Tax Department,

Corporation Tax Bureau.

In the matter of the Application of BASS, RATCLIFF & GRETTON, LTD., for a Revision of Taxes Assessed Against It under Article IX-A of the Tax Law for the Year Beginning November 1, 1918.

To the New York State Tax Commission.

Pursuant to Section 218 of the Tax Law, application is hereby made by Bass, Ratcliff & Gretton, Ltd., a foreign corporation, having an office in the United States of America, at 90 Warren Street, in the Borough of Manhattan, in the County of New York, for a revision of the taxes assessed against it, pursuant to Article IX-A of the Tax Law, such taxes being audited and stated in a bill received by the applicant herein from the State Comptroller, dated September 25th, 1919, and a hearing is hereby respectfully requested for the purpose of revising said account so audited and stated.

The applicant herein respectfully objects to the payment of the said taxes assessed pursuant to Article IX-A so far as the same is computed upon such part of the income as is represented by the earnings of the Company made outside of the United States of America, and also in so far as the same is not computed upon the amount of income reported to the Federal Government of the United States under the Income Tax Law of the United States, and respectfully requests that the tax be assessed at the

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minimum percentage upon that part of the capital stock of the Company as is employed within the United States of America.

Dated, N. Y., September 26, 1919.

Respectfully,

(S.)

BASS, RATCLIFF & GRETTON,
LTD.,
By CHARLES H. TAYLOR,
United States Manager Applicant,
By OLNEY & COMSTOCK,
Attorneys for Applicant.

Office & P. O. Address,
68 William Street,
Borough of Manhattan,
New York City.

37

EXHIBIT G.

September 26, 1919.

State Tax Commission,
Albany, N. Y.

DEAR SIRs:

We are sending you herewith a request for revision of the tax assessed upon Bass, Ratcliff & Gretton, for the period ending October 31, 1919, the bill for which is dated September 25, 1919. The reason we are asking for this revision is because we think, under the Act, your method of computation is wrong, namely, that you ascertain the proportion of percentage of the income taxable, as the assets in New York are to the assets everywhere and then—and this is where we think you are in error—assess the tax upon the percentage so found of the entire net income of the corporation, although it appears from the return that, as to the United States of America and as reported to the United States Treasury Department, there was no net income to the corporation from its business in the United States, but on the contrary there was a deficit.

We wish to test this question by proper proceedings in court, but we do not feel that, technically, we should begin these proceedings until we have asked you to revise and you have passed upon such request. We would also ask for an early date for the reason that, under the Act, unless this tax is paid within thirty days from the date of the bill—which is September 25th—a penalty of 10% is added automatically, and we would like to have you pass upon our request for revision so that we may begin our certiorari proceedings before such thirty days begin to run.

Thanking you in advance, we are

Yours respectfully,

(S.)

OLNEY & COMSTOCK.

GCC/WVK.

38

EXHIBIT H.

State Tax Commission.
Walter H. Knapp, President.
John J. Merrill.
M J. Walsh.

Corporation Tax Bureau.
Newell W. Canfield,
Deputy Commissioner.

State of New York,
Tax Department,
Albany.

October 11 1919.

A 50746.

Bass, Ratcliff & Gretton,
Care of Olney & Comstock,
68 William Street,
New York City.

GENTLEMEN:

The department acknowledges receipt of your letter of September 26th.

Pursuant to such application a hearing will be granted in reference to the franchise tax assessed on report for the tax year beginning November 1, 1918, and you will be duly notified of the date of same when set. This matter will be reached in due course but evidently cannot be held within the time suggested.

Respectfully yours,

(S.)

STATE TAX DEPARTMENT,
By N. W. CANFIELD,
Deputy Commissioner.

NWC/D.

39

EXHIBIT I.

To the State Tax Department of New York and
To the State Comptroller at Albany, N. Y.

DEAR SIRs:

We are enclosing check for the payment of bill rendered by you to us under date of September 25, 1919, as a franchise tax under Article 9A of the Tax Law, and amounting to \$826.14.

We are sending this to you under protest upon the ground that any assessment for taxes and any attempt to collect taxes under the

provisions of Article 9A of the Tax Law, Chapter 60 of the Consolidated Laws of the State of New York, being Chapter 62 of the Laws of the State of New York for the year 1909, as amended, said Article 9A being added thereto by Chapter 726 of the Laws of 1917 and amended by Chapter 417 of the Laws of 1918, upon the grounds, among others, that such law is in violation of the Constitution of the United States and the Constitution of the State of New York, in that, among other things, it deprives the persons so taxed of their property without due process of law and without just compensation, and denies to such persons the equal protection of the laws and that it attempts illegally to impose a tax upon a tax imposed and assessed by the Government of the United States and imposes an unequal tax and illegally discriminates against certain of the persons so taxed and in favor of certain other persons so taxed; also upon the ground that the said tax is computed upon such part of the income as is represented by the earnings of the company made outside of the United States of America and therefore is not in accordance with the directions of the Act in question in that the same is not computed upon the amount of income reported

40 to the Federal Government of the United States under the Income Tax Law of the United States, and upon the further ground that application has been made with the New York State Tax Commission for revision of the assessment upon which the said tax is based or computed, and that such revision is still pending and undetermined.

Dated, New York, Oct. 18, 1919.

BASS, RATCLIFF & GRETTON,
LTD.

(S.)

By OLNEY & COMSTOCK.

EXHIBIT J.

File with State Tax Department, Albany, N. Y.

Taxation of Corporate Franchises under Article 9-a of the Tax Law for the Tax Year Beginning November 1, 1919.

This report is due July 1, 1919, or within thirty days after filing report with the United States Treasury Department.

As American Manager of the British Corporation of Bass, Ratcliff & Gretton, Limited, Company, I make the following report of such company for the year ending June 30th, 1918, pursuant to Article 9-A of the Tax Law.

41 (Date inserted above must be the same as given in answer to (7) below.)

(1) Organized Jan. 13, 1888, under the Laws of Great Britain.

(2) Began business in New York March, 1897.

(3) If not incorporated under laws of New York, has it been authorized to do business in New York State? —.

(4) Authorized capital stock \$—.

(5) Issued capital stock, \$—.

(If organized with shares without par value, insert the amount of paid-in capital.)

(6) Amount of average indebtedness for year, \$—.

(7) Entire net income for the year ending — —, 191-, as shown by its report to United States Treasury Department, before any deduction for excess profit or normal income tax has been made, \$—.

NOTE. The date used must be that of the last period ending on or before June 30, 1919, for which a report was made to the Federal government.

(8) If a corporation is not organized under the laws of any state within the United States it should return its entire net income, wherever earned, \$—.

(9) If the amount reported above is inaccurate, state the amount claimed to be correct, \$—.

(10) Nature of business and how transacted: Importation and sales of ale.

(11) Place, street and number where such business is conducted: 90 Warren St., New York City.

42 (12) Where will mail reach the company? % Olney & Comstock, 68 William St., New York City.

(13) State the city or town, street number and state where this company maintained any store, warehouse, factory or other place of business outside the State of New York: 115 West Grand Ave., Chicago, Ill.; also has principal office at Burton-on-Trent, England, and many other places in different parts of the world.

(14) Any corporation taxable hereunder may omit from this report the segregation of assets on this page only by signing the following consent:

I am authorized by the Board of Directors of this corporation to consent and I do hereby consent that said corporation be taxed upon its entire net income at $4\frac{1}{2}$ per cent or upon its entire capital stock at one mill on the dollar, as provided by law.

For further particulars, see annexed affidavit of Charles H. Taylor.

Do not sign consent unless taxable by the State of New York on entire income or entire issued capital stock.

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EXHIBIT J-2.

To the State Tax Department, Albany, N. Y.:

STATE OF NEW YORK,

County of New York, ss:

Charles H. Taylor, being duly sworn, deposes and says:

I am the American Manager of Bass, Ratcliff & Gretton, Limited, a British corporation having its principal office at Burton-on-Trent, England, and its American office at No. 90 Warren Street, New York City.

The business of the Company has been to manufacture and sell ales, which are not manufactured in New York State but which are manufactured in Great Britain and imported into this country.

Owing to the Federal laws prohibiting the manufacture, importation or sale of the product of the Company, the Company has no intention of continuing such business in the State of New York for the tax year beginning November 1, 1919, and therefore does not desire a franchise to do business in the State of New York for that year. As a matter of fact, it has not made any sales of its product in the State of New York since on or about the 6th day of November, 1918.

44 It therefore makes no report to the State Tax Department except as hereto annexed, although it desires to state the facts to the State Tax Department so that it may not be continued upon the tax books of the Department.

(S.)

CHARLES H. TAYLOR,

American Manager Bass, Ratcliff & Gretton, Ltd.

Sworn to before me this 5th day of November, 1919.

(S.)

[Notarial Seal.]

G. H. RAYMOND,

Notary Public, Kings Co., #25.

Certif, filed N. Y. Co. # 64.

N. Y. Reg. No. 10082.

Com. expires March 30/20.

EXHIBIT K.

November 13, 1919.

State Tax Department,
Albany, N. Y.

DEAR SIRs:

We are enclosing an affidavit, accompanying a statement of Charles H. Taylor, the American Manager of Bass, Ratcliff & Gretton, Limited, showing that the Company does not intend to do business

in the State of New York for the tax year beginning November 1, 1919, and therefore does not desire any franchise for that purpose.

Yours respectfully,

(S.)

OLNEY & COMSTOCK.

G. C. C./W. V. K.
(Enclosures.)

45

EXHIBIT L.

State Tax Commission.

Walter H. Knapp, President.

John J. Merrill.

M. J. Walsh.

Corporation Tax Bureau.

Newell W. Canfield,

Deputy Commissioner.

State of New York,

Tax Department,

Albany.

December 8, 1919.

A-50746-H.

Bass, Ratcliff & Gretton, Ltd.,
Care of Olney & Comstock,
68 William St., New York City.

GENTLEMEN:

In reference to your letter of November 13th, enclosing partial report and affidavit for the tax year beginning November 1, 1919, under Article 9-A of the tax law, enclosed find proper form of affidavit which may be modified to apply to New York State assets and business and should also indicate the date of the revocation of the certificate of authority of this company to transact business within the State of New York.

Respectfully yours,

(S.)

STATE TAX DEPARTMENT,
By N. W. CANFIELD,
Deputy Commissioner.

NWC/D.
30.

46

EXHIBIT M.

December 10, 1919.

Re Bass, Ratcliff & Gretton, Ltd.
File A-50746-H.

State Tax Department.

DEAR SIRs:

Answering yours of December 8th as to Bass, Ratcliff & Gretton, Ltd., do I understand from this letter that, before you will entertain an affidavit showing that a Company no longer intends to do business in this state, you must have evidence before you that the Company has had its certificate of authority to do business in this state revoked?

I am asking this question because, as to this particular Company, it has never applied for any revocation of its certificate of authority and has never had its certificate of authority to do business in this state revoked, although it ceased to do business here November 6, 1918.

Yours respectfully,
(S.)

GEO. CARLTON COMSTOCK.

GCC/WVK.

47

EXHIBIT N.

State Tax Commission.

Walter H. Knapp, President.

John J. Merrill.

M. J. Walsh.

Corporation Tax Bureau.

Newell W. Canfield,

Deputy Commissioner.

State of New York,

Tax Department,

Albany.

A-50746-H.

December 18, 1919.

Bass, Ratcliff & Gretton, Ltd.,
Care of Olney & Comstock,
68 William Street,
New York City.

GENTLEMEN:

In reply to your letter of December 10th, you are advised:
If the affidavit suggested is filed with this department, no franchise tax will be assessed.

The Secretary of State, however, should be notified of the revocation of the designation within the State, that the record of such office may be completed.

Respectfully yours,

(S.)

STATE TAX DEPARTMENT,
By N. W. CANFIELD,
Deputy Commissioner.

NWC/D.

48

EXHIBIT O.

To the State Tax Department,
Albany, N. Y:

In re Bass, Ratcliff & Gretton, Ltd., P. O. Address c/o Olney & Comstock, 68 William St., New York City.

STATE OF NEW YORK,
County of New York, ss:

Charles H. Taylor, being duly sworn, deposes and says:

I reside at No. 615 West 162nd Street, in the Borough of Manhattan, City of New York; I have been the sole American representative and American Manager of Bass, Ratcliff & Gretton, Limited, since the first day of November, 1913.

The said Bass, Ratcliff & Gretton, Limited, is a British corporation, having its principal office at Burton-on-Trent, England. The said corporation ceased business in the State of New York on or about the sixth day of November, 1918, and has notified the Secretary of State accordingly, and it no longer desires permission for a license from the State of New York to transact business therein, but desires that its license heretofore given to it for that purpose be revoked; nor does it contemplate resuming operations in New York State.

Deponent further states that this is made for the purpose of having the name of the corporation eliminated from the list of those required to file annual returns under Section 9a of the Tax Law or otherwise, and that he realizes that the obligations to secure blanks and make return is assumed by the corporation in event operations are resumed in New York State.

49

(S.)

CHARLES H. TAYLOR,
American Manager Bass, Ratcliff & Gretton, Ltd.

Subscribed and sworn to this 23 day of December, 1919.

(S.)

[Notarial Seal.]

G. H. RAYMOND,
Notary Public, Kings Co., No. 26.

Certificate filed New York Co. No. 64.
New York Register's No. 10062.
Commission expires March 30, 1920.

EXHIBIT P.

December 24, 1919.

Re Bass, Ratcliff & Gretton, Ltd.

State Tax Department.

DEAR SIR:

In answer to your letter of December 8th, we beg to enclose a copy of letter this day written and sent to the Secretary of State by Bass, Ratcliff & Gretton, Ltd., and also a further affidavit by Mr. Taylor, the American Manager of Bass, Ratcliff & Gretton, which follows, as closely as the facts permit, the form of affidavit which you forwarded to us.

Yours respectfully,
(S.)

OLNEY & COMSTOCK.

GCC/WVK.
(Enclosures.)

50

EXHIBIT Q.

December 24, 1919.

Re Bass, Ratcliff & Gretton, Limited.

Secretary of State of New York.

DEAR SIR:

Bass, Ratcliff & Gretton, Ltd., a British corporation, having its principal office at Burton-on-Trent, England, and its American office at No. 90 Warren Street, New York City, and whose business it is and has been to manufacture and sell ales which are not manufactured in New York State, but which are manufactured in Great Britain and imported into this country, has not transacted business in New York State since November 6, 1918, and does not intend to resume business in this State.

It was licensed to do business in this state by a license issued by you to it on the 3rd day of February, 1898.

It now asks you to revoke such license.

Yours respectfully,

BASS, RATCLIFF & GRETTON,
For CHARLES H. TAYLOR,
American Manager.

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EXHIBIT R.

State Tax Department.

May 21, 1920.

DEAR SIR:

On the hearing for revision held May 19th, of Bass, Ratcliff & Gretton, Ltd., the question was asked what the local assessments were on this corporation. The answer is that there was no local assessment.

Yours very truly,
(S.)

OLNEY & COMSTOCK.

GCC/WVK.

EXHIBIT S.

State of New York,
Tax Department.
Corporation Tax Bureau.

Albany, July 28, 1920.

In the Matter of the Application of BASS, RATCLIFF & GRETTON, LTD., for a Revision of Taxes Assessed Against It under Article IX-A of the Tax Law, Section 214.

An application having been made by the above-named Bass, Ratcliff & Gretton, Ltd., for a revision and resettlement of the taxes assessed and determined against it by the State Tax Department, based on business for the one year ending June 30, 1918, and the said State Tax Department having heard the proofs offered on behalf of the said Bass, Ratcliff & Gretton Ltd. in support of said application, does hereby determine after due consideration thereof that the assessment heretofore made against the said Bass, Ratcliff & Gretton, Ltd. for the sum of Eight hundred twenty-six and 14/100 dollars, should be affirmed; which said sum of Eight hundred twenty-six & 14/100 dollars is hereby determined as the amount which said Bass, Ratcliff & Gretton, Ltd. is liable to pay under the provisions of Section 214 of the Tax Law, based on business for the one year ending June 30, 1918.

(S.)

N. W. CANFIELD,
Deputy Tax Commissioner.

Countersigned:

(S.) JOHN J. MERRILL,

(S.) JAMES D. SMITH,
Tax Commissioners.

53

EXHIBIT T.

State Tax Commission.

M. J. Walsh, President.

John J. Merrill.

James D. Smith.

Corporation Tax Bureau.

Newell W. Canfield,

Deputy Commissioner.

State of New York,

Tax Department,

Albany.

July 28, 1920.

A-79773-H.

Bass, Ratcliff & Gretton, Ltd.,
 Care of Olney & Comstock,
 68 William Street,
 New York City.

GENTLEMEN:

Enclosed find determination in reference to franchise tax assessed against this corporation under Article 9-A of the tax law for the year beginning November 1, 1918.

Respectfully yours,

(S.)

STATE TAX DEPARTMENT,
 By N. W. CANFIELD,
Deputy Commissioner.

C.
 N. W. C./D.
 Det.

54

RETURN TO WRIT.

Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of BASS,
 RATCLIFF & GRETTON, LIMITED,
 against

STATE TAX COMMISSION, Respondent.

The State Tax Commission of the State of New York, composed of State Tax Commissioners Michael J. Walsh, John J. Merrill and James D. Smith, obedient to the command of the writ of certiorari

herein issued out of this court on the 30th day of August, 1920, a copy of which is hereto attached,

Hereby certifies and returns to this court the accounts and all the evidence taken before it on the application of Bass, Ratcliff & Gretton, Limited, for a revision and resettlement of its account for its annual franchise tax under Article 9-A of the Tax Law for the tax year beginning November 1, 1918, and all the papers and proofs upon the original statement of said account and all proceedings thereon, documents, reports and records submitted to or considered by it, together with its action in the premises, to wit:

Exhibit "A."—Formal report of the relator corporation, made to the State Tax Department, indicating that the relator's net income for the fiscal year ending June 30, 1918, was nothing.

55 Exhibit "B."—Letter dated February 7, 1919, from the State Tax Department, addressed to the relator corporation, enclosing additional blank and calling for an amended report.

Exhibit "C."—Amended report of Bass, Ratcliff & Gretton, Limited, for the tax year in question showing the company's entire net income in the amount of \$2,185,600 and revising the figures calling for its total and New York State assets.

Exhibit "D."—Formal protest of the relator corporation against the making of a further return and claiming that any tax assessed against the corporation would be unconstitutional on various grounds.

Exhibit "E."—Letter of Olney & Comstock attorneys for the relator corporation, dated September 5, 1919, addressed to the State Tax Department, enclosing the aforementioned report.

Exhibit "F."—Formal protest, dated September 26, 1919, by the relator corporation protesting against the payment of the tax stated against it by the State Tax Commission on September 25, 1919, and applying for a revision and cancellation of the said tax.

Exhibit "G."—Letter dated September 26, 1919, accompanying the above-mentioned petition for a revision of the tax, addressed to the State Tax Commission, by Olney & Comstock, attorneys for the relator corporation.

Exhibit "H."—Notice dated October 11, 1919, by the State Tax Commission to the relator, advising that a hearing will be granted in the matter of the cancellation of the tax.

Exhibit "I."—Letter from the relator corporation, addressed to the State Tax Department and the State Comptroller, dated October 18, 1919, enclosing check in the amount of \$826.14 in payment
56 of the tax assessed against it by the Commission.

Exhibit "J."—Affidavit of Charles H. Taylor, American Manager of the relator corporation, sworn to on the 5th day of November, 1919, stating that the corporation does not desire to do business in the State of New York.

Exhibit "K."—Letter of Olney & Comstock, attorneys for the relator, accompanying the aforementioned affidavit of Charles H. Taylor.

Exhibit "L."—Letter to the relator corporation, dated December 8, 1919, from the State Tax Department, referring to the form of affidavit furnished by the relator.

Exhibit "M."—Letter of George Carlton Comstock, dated December 10, 1919, addressed to the State Tax Department, indicating that the relator had never applied for any revocation of its certificate of authority to do business in the State of New York.

Exhibit "N."—Letter from the State Tax Department dated December 18, 1919, addressed to the relator corporation, concerning the affidavit furnished by it and concerning the revocation of its certificate of authority to do business in this State.

Exhibit "O."—Additional affidavit of Charles H. Taylor, American Manager of the relator, sworn to on the 23rd day of December, 1919, made for the purpose of having the corporation eliminated from the list of those required to file annual returns under Article 9-A of the Tax Law.

Exhibit "P."—Letter from Olney & Comstock, addressed to the State Tax Department, and dated December 24, 1919, enclosing a copy of a letter written the Secretary of State and the affidavit of its manager hereinbefore mentioned.

Exhibit "Q."—Letter from the relator corporation, dated
57 December 24, 1919, addressed to the Secretary of State, indicating that the corporation does not intend to resume business in this State.

Exhibit "R."—Communication dated May 21, 1920, from Messrs. Olney & Comstock, attorneys for the relator, to the State Tax Department, showing that no local assessments were made against the corporation.

Exhibit "S."—Transcript of proceedings and testimony had and taken at the office of the State Tax Commission, Albany, N. Y., on the 18th day of May, 1920, in the matter of the revision and resettlement of its annual franchise tax.

Exhibit "T."—Final determination of the State Tax Commission, dated June 30, 1918, stating the tax against the corporation in the sum of \$826.14 and refusing to revise or readjust the same.

The State Tax Commission further denies each and every allegation in the petition for a writ of certiorari or contained in the writ herein, except in so far as the same are shown to be true by this return, and the State Tax Commission alleges that the tax imposed upon Bass, Ratcliff & Gretton, Limited, was justly and legally imposed upon it under the tax laws of this State.

In witness whereof, the State Tax Commission has hereunto set its hand and seal this 9th day of October, 1920.

[SEAL.]

STATE TAX COMMISSION,
By M. J. WALSH, *President*.

58

EXHIBIT S.

State of New York,
Tax Department.

In the Matter of the Application of BASS, RATCLIFF & GRETTON, LTD., for a Revision and Readjustment of Franchise Tax Assessed against it under Article 9-a of the Tax Law for the Tax Year Beginning November 1, 1918, Based on Report of Its Business for the Year Ending June 30, 1918.

Hearing held at the office of the State Tax Department, Albany, N. Y., on the 18th day of May, 1920, at 2 P. M.

Appearances:

George C. Comstock appeared for the petitioner, Bass, Ratcliff & Gretton, Ltd.

Hon. John J. Merrill, State Tax Commissioner, with N. W. Canfield, Deputy Commissioner, appeared for the State of New York Tax Department.

Mr. Comstock: The report of the company shows that it is a British corporation, with a branch in the United States at 90 Warren Street, New York City; that its net income for the fiscal year ending June 30, 1918, which is the one in question, reported to the United States Treasury Department was nothing; that its entire net income wherever earned for that year was \$2,185,600, and then its report without the State, the exact figures show a comparatively small proportion of its assets in this country as compared to its assets everywhere. Upon its report to the State Tax Department, the Department taxed it not upon that proportion of its capital stock employed in this country at the minimum rate, but upon that portion of its net income proportioned as its assets in New York State were to its assets everywhere. We find no fault with the arithmetical figures of the State of New York Tax Department; the only fault we find with the assessment is the method of computation. We think, there being no net income reported to the United States Treasury Department, the tax should be assessed at the minimum rate on that portion of its capital stock employed in the State of New York.

CHARLES H. TAYLOR, being duly sworn, testified:

By Mr. Merrill:

Q. What is your connection with this company?

A. American manager.

Q. Where did you obtain the figures that you presented in this report?

A. From the Board of Directors' report from the home office.

Q. How did you know the amount of property you had on hand in New York?

A. We make a report annually.

Q. So that the amount of your inventory indicated your property there?

60 A. It shows the average monthly value of the property; we reported the stock on hand for a certain period each year, June 30.

Q. Do you know what that indicated; do you know what your report indicated for that period?

A. That would just show what was left after being sold for the year.

Q. What do the figures, \$23,668.33, what does that represent?

A. The average amount of stock we held during the year, and so forth.

Q. What do you mean by "and so forth"?

A. The only property we had was goods for sale.

Q. That was merchandise; didn't you have any office furniture, fixtures, etc.?

A. Yes, a very small lot.

Q. What was the value of them?

A. About \$950.

Q. What did that consist of?

A. Desks, typewriter, chairs, safe, rugs, everything was quite old.

Q. That was about the amount you are carrying it at?

A. Yes, we have recently sold it off, April 30 for \$945.03 I think it was altogether.

Q. On how long a time did you sell goods?

A. That was all ale principally; we did not handle any bottles, this was on draft.

Q. What do those figures represent, where were they taken from?

A. On the selling price.

Q. On how long a time did you sell those goods generally?

A. Thirty days' time.

Q. So your bills and accounts receivable would run on an average about thirty days?

A. Yes.

Q. The company was organized under the laws of Great Britain?

A. Yes.

Q. How long a time have you been doing business in New York?

A. Since 1897.

Q. Do you know what your total sales were during that year in New York, in this country, approximately?

A. \$258,000.

61 Q. How much of that was in New York approximately, the bulk of it wasn't it?

A. Yes; we had some in Chicago, the bulk we had in New York.

Q. The Chicago business was not to exceed 7%, was it, all of your outside business in this country was not over 7%, was it?

A. No, I don't believe it would run over that.

Q. Your sales from the New York stock was about \$240,000 for that year?

A. I would say yes.

Q. In other words, you take your total sales in New York and divide by twelve and you get approximately the amount you return here as your bills and accounts receivable for New York?

A. Yes.

Q. As I understand from your statement, your gross sales were about \$258,000?

A. Yes.

Q. That gives cost to you without consideration of expense of \$256,600?

A. Yes.

Q. Your expenses were \$68,000?

A. Yes.

Q. What were these commissions allowed for?

A. Agents in various cities, Philadelphia and places where we had no agencies of our own.

Q. Were they paid a commission directly on sales or what?

A. Yes, directly on sales. On the amount of sales we have in their particular city.

Q. None of it paid to the New York branch?

A. Salesmen were on direct salary in New York City branch.

Q. They had no other remuneration except a direct salary?

A. No.

Q. We are to conclude from your statement and this report that the company had tangible personal property in the City of New York of between \$23,000 and \$24,000, including furniture and fixtures?

A. Yes.

Q. And the merchandise stock on hand?

A. Yes.

Q. And bills and accounts receivable of about \$20,450?

A. Yes.

62 Q. Do you know whether this company had been taxable locally prior to 1918 on personal property?

A. I do not think so; I do not recall that they were.

Mr. Merrill: You can find out and put it in here as an exhibit.

Q. Your company was continuously in business from March, 1897, to April of this year in New York?

A. We ceased importing; the last sale was made in November, 1918; the United States government prohibited any importations April 15, 1918.

Q. You disposed of the balance of your property down there in April of this year?

A. Yes, we closed the office.

Q. That was your furniture?

A. Yes, we had no stock; the last stock sold was sold in November, 1918.

The exhibits to the return are identical with the exhibits to the petition printed herein, except that Exhibit S to the return (printed above) was not an exhibit to the petition and Exhibit T to the return is the same as Exhibit S to the petition and Exhibit T to the petition is not an exhibit to the return.

63

Affidavit of No Opinion.

STATE OF NEW YORK,

County of New York, ss:

Geo. Carlton Comstock, being duly sworn, deposes and says that he is a member of the firm of Olney & Comstock, attorneys for the relator in this proceeding; that no opinion was rendered by the Justice of Special Term upon the granting of the order allowing the writ of certiorari.

GEO. CARLTON COMSTOCK.

Sworn to before me this 21st day of October, 1920.

F. T. SARGENT,

Notary Public, No. 671, New York County.

64

Waiver of Certification.

Pursuant to Section 3301 of the Code of Civil Procedure, it is hereby stipulated and agreed that the foregoing printed papers contain true and correct copies of the writ of certiorari, order allowing same, petition, exhibits and return to writ, and the whole thereof, now on file in the office of the Clerk of Albany County, and certification thereof is hereby waived.

Dated, New York, November 1, 1920.

OLNEY & COMSTOCK.

Attorneys for Relator.

68 William Street, New York City.

CHARLES D. NEWTON,

Attorney-General,

Attorney for Respondents, Capitol, Albany, N. Y.

65 *Order of Appellate Division Appealed From.*

At a Term of the Appellate Division of the Supreme Court Held in and for the Third Judicial Department, at the County Court House, in the City of Albany, Commencing on the 3rd Day of May, 1921.

Present:

Hon. John M. Kellogg,
Presiding Justice.

Hon. John Woodward,
" Aaron V. S. Cochrane,
" Michael H. Kiley,
" Charles C. Van Kirk,
Associate Justices.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of BASS,
RATCLIFF & GRETTON, LIMITED, Relator,

against

STATE TAX COMMISSION, Respondent.

The relator above named having heretofore duly obtained an order granting a writ of certiorari to review the determination of the State Tax Commission in refusing to revise and readjust the relator's annual franchise tax for the tax year beginning November 1, 1918, and a return having been duly filed to said writ of certiorari by the respondent, State Tax Commission, and said proceeding having come on for argument before this court, and
66 Messrs. Olney & Comstock, by Mr. Robert C. Beatty, having been heard on behalf of the relator, the respondent appearing by the Attorney General, Charles D. Newton, and due deliberation having been had,

Now, on motion of Charles D. Newton, Attorney General of the State of New York and attorney for the State Tax Commission, it is

Ordered, that the determination of the State Tax Commission herein, made on the 28th day of July, 1920, be and the same hereby is unanimously affirmed with Fifty Dollars (\$50.00) costs and disbursements.

JOSEPH H. HOLLANDS,
Clerk.

A Copy.

JOSEPH H. HOLLANDS,
Clerk.

67 *Notice of Appeal to Court of Appeals.*

Supreme Court of the State of New York, County of Albany.

PEOPLE OF THE STATE OF NEW YORK on the Relation of BASS,
RATCLIFF & GRETTON, LTD., Relator,

against

STATE TAX COMMISSION, Respondent.

SIRS:

Please take notice that the Relator in the above entitled proceeding hereby appeals to the Court of Appeals from the order of the Appellate Division of the Supreme Court for the Third Judicial Department, entered in the office of the Clerk of the County of Albany on or about the 7th day of September, 1921, affirming the determination of the State Tax Commission herein, and the said Relator appeals from each and every part of said order, as well as from the whole thereof.

Dated, New York, September 13, 1921.

Yours, etc.,

OLNEY & COMSTOCK,
Attorneys for Relator.

Office & P. O. Address,
No. 68 William Street,
Borough of Manhattan,
City of New York.

68 To:
Luther C. Warner, Esq.,
Clerk County of Albany.
Hon. Chas. D. Newton,
Attorney General,
Attorney for Respondent.

Undertaking.

Supreme Court of the State of New York, County of Albany.

PEOPLE OF THE STATE OF NEW YORK on the Relation of BASS,
RATCLIFF & GRETTON, LTD., Relator,

against

STATE TAX COMMISSION, Respondent.

Whereas, the above named People of the State of New York on the relation of Bass, Ratcliff & Gretton, Ltd., Relator and appellant, has appealed or intends to appeal to the Court of Appeals from the order of the Appellate Division of the Supreme Court for the
69 Third Judicial Department, entered in the office of the Clerk of the County of Albany on or about the 7th day of September,

1921, affirming the determination of the State Tax Commission herein, and appeals from each and every part of said order, as well as from the whole thereof.

Now, Therefore, the United States Fidelity and Guaranty Company, having an office and usual place of business at No. 47 Cedar Street, in the City of New York, does hereby, pursuant to the statute in such cases made and provided, undertake that the appellant, People of the State of New York on the relation of Bass, Ratcliff & Gretton, Ltd., will pay all costs and damages which may be awarded against the appellant, People of the State of New York on the relation of Bass, Ratcliff & Gretton, Ltd., on said appeal, not exceeding Five Hundred (\$500.00) Dollars.

Dated, New York, September 13th, 1921.

UNITED STATES FIDELITY & GUARANTY
COMPANY,

By S. FRANK HEDGES,

Attorney-in-Fact.

Attest:

WILLIAM H. ESTWICK, *Attorney-in-Fact.*

STATE OF NEW YORK,

County of New York, ss:

On the 13th day of September, 1921, before me personally came S. Frank Hedges, to me known, who, being by me duly sworn, did depose and say that he resides in the City of New York; that he is Attorney-in-fact of the United States Fidelity and Guaranty Company, the corporation described in and which executed the within instrument; that he knew the seal of said corporation, that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order; and that the said Company has received from the Superintendent of Insurance of the State of New York a certificate of solvency and of its sufficiency as surety or guarantor, under Chapter 182 of the Insurance Law of the State of New York as amended by Chapter 182 of the Laws of 1913, and that such certificate has not been revoked. And the said S. Frank Hedges further said that he was acquainted with William H. Estwick and knew him to be the Attorney-in-fact of said Company; that the signature of said William H. Estwick, subscribed to the within instrument, is in the genuine handwriting of said William H. Estwick, was subscribed thereto by like order of said Board of Directors, and in the presence of him the said S. Frank Hedges.

JAMES A. STARR,

Commissioner of Deeds for the City of New York.

Term expires November 11, 1921.

Certificates filed in Richmond County and the following Counties:
County Clerks' Nos.: N. Y. 411, Kings 300, Queens 3946, Bronx

51.

Registers' Nos.: New York 21191, Kings 1137, Bronx 21055.

71 STATE OF NEW YORK,
County of New York, ss:

I, S. Frank Hedges, Attorney-in-fact of the United States Fidelity and Guaranty Company, have compared the foregoing resolution with the original thereof, as recorded in the minute book of the said Company, and do hereby certify that the same is a true and correct transcript therefrom, and of the whole of said original resolution.

Given under my hand and the seal of the Company, at the City of New York, this 13th day of September, 1921.

S. FRANK HEDGES,
Attorney-in-Fact.

Affidavit of No Opinion.

STATE OF NEW YORK,
County of New York, ss:

Robert C. Beatty, being duly sworn, says that he is associated with Olney & Comstock, attorneys for the relator in this proceeding, and argued the same in the Appellate Division, Third Department. That Court did not render any opinion in determining this certiorari proceeding by affirming the determination of the State Tax Commission.

ROBERT C. BEATTY.

Sworn to before me this 13th day of September, 1921.

CHARLES T. LESTER,
Notary Public, New York County.

New York County Clerk's No. 347.
New York County Register's No. 3298.
Commission Expires March 30th, 1923.

72 *Waiver of Certification.*

It is hereby stipulated that the papers as hereinbefore printed consist of true and correct copies of the order of affirmance of the Appellate Division, Third Department, appealed from, the notice of appeal to the Court of Appeals, the undertaking on appeal to the Court of Appeals, affidavit of no opinion, and all the papers upon which the Court below acted in making the order appealed from, and the whole thereof, now on file in the office of the Clerk of the County of Albany, and certification thereof, in pursuance of Sections 1353 and 3301 of the Code of Civil Procedure, is hereby waived.

Dated, New York, September 15th, 1921.

OLNEY & COMSTOCK,
Attorneys for Relator-Appellant.
CHARLES D. NEWTON,
Attorney General, Attorney for Respondent.

73 STATE OF NEW YORK,
Court of Appeals,
State Reporter's Office, ss:

I, J. Newton Fiero, Reporter of the Court of Appeals of the State of New York, do hereby certify that I have compared the annexed copy of opinion in the case of *The People of the State of New York ex rel. Bass, Ratcliff & Gretton, Limited, Appellant v. State Tax Commission, Respondent*, decided by the Court of Appeals on the eighteenth day of October 1921, with the official opinion rendered in such case, and I further certify that the same is a true and correct copy of said opinion and of each and every part thereof.

In witness whereof, I have hereunto affixed my signature as Reporter of the Court of Appeals, at the City of Albany, in the State of New York, this seventh day of December, 1921.

[Seal of Court of Appeals.]

(S.)

J. NEWTON FIERO,
As Reporter of the Court of Appeals
of the State of New York.

Attest:

[L. s.] R. M. BARBER,
Clerk of the Court of Appeals.

STATE OF NEW YORK:

Court of Appeals.

I, Frank H. Hiscock, Chief Judge of the Court of Appeals of the State of New York, the highest Appellate Court and Court of Record in and for said State, do hereby certify that Richard M. Barber is the clerk of said court, having custody of the seal of said court and of the decisions, minutes and records thereof, and that J. Newton Fiero is the official reporter of said court, having custody of the official opinions, written and handed down by said court and the members thereof, and of the official publication and reports thereof; and I further certify that the attestation and authentication, by said clerk and said reporter of the annexed copy of the official opinion rendered in the case of *The People of the State of New York ex rel. Bass, Ratcliff & Gretton, Limited, Appellant, v. State Tax Commission, Respondent*, decided by the said Court of Appeals on the eighteenth day of October, 1921, is in due form and sufficient under the laws of the State of New York and the rules and practice of the said Court of Appeals; that the seal imprinted thereon is the true and genuine seal of the said Court of Appeals, and that the signature of Richard M. Barber, as clerk of said court, appended thereto is the true and genuine signature of said Richard M. Barber, and the signature of J. Newton Fiero, as reporter of said court, appended thereto is the true and genuine signature of said J. Newton Fiero.

In witness whereof, I have hereunto subscribed my official signature at the Chambers of said court at the Court of Appeals Hall, in the City of Albany and State of New York, on the eighth day of December in the year one thousand nine hundred and twenty-one.

(S.)

FRANK H. HISCOCK,

*As Chief Judge of the Court of Appeals
of the State of New York.*

75

Court of Appeals, State of New York.

THE PEOPLE OF THE STATE OF NEW YORK ex Rel. BASS, RATCLIFF &
GRETTON, LIMITED, Appellant,

against

STATE TAX COMMISSION, Respondent.

(Decided October 18, 1921.)

Appeal from Order of Appellate Division, Third Department, Affirming, in Certiorari Proceedings, a Determination of the State Tax Commissioners in Assessing a Franchise Tax.

Robert C. Beatty for appellant.

Charles D. Newton, Attorney-General (C. T. Dawes of counsel),
for respondent.

POUND, J.:

Relator is a foreign manufacturing corporation organized under the laws of Great Britain and authorized to do business in the state of New York. For the privilege of doing business in this state it must annually pay in advance for the year beginning November first next preceding an annual franchise tax to be computed by the tax commission upon the basis of its net income for the year preceding. (Tax Law (Cons. Laws, ch. 60), Sec. 209.) Its business in New York was the importation and sale of Bass ale manufactured at Burton-on-the-Trent. The question is as to the amount of the annual franchise tax for the year beginning November 1, 1918. It had in the year 1918 total segregated assets wherever located \$3,-212,405; actual value of shares of stocks of other corporations \$845,195, a total of \$4,057,600. Limiting the value of such shares to ten per centum of the aggregate real and tangible personal property (Tax Law, Par. 214, Sub. 6) the Commission found total assets of \$3,501,483; assets in New York \$44,117. Its total net income for the year was \$2,185,600. Its total sales in New York for the year amounted to about \$240,000. Its net income from the New York business was nothing. The state tax commission under section 215 of the Tax Law providing for the computation of the tax by a comparison of total assets with assets in New York, allocated as taxable income to the state of New York the sum of \$27,537.68, and computed a tax thereon at the rate of

three per cent, amounting to \$826.14. This tax was in lieu of all other taxes on personal property, capital stock or income. (Tax Law, Sec. 219-j; Sec. 350, subd. 7.) The method of computation is stated in detail in the recent case of *People ex rel. Alpha P. C. Co. v. Knapp* (230 N. Y. 48).

The sole question considered on this appeal is the constitutionality of the operation of the Tax Law which makes as the basis of relator's taxable net income in New York a portion of its net income earned wholly outside the state.

The tax is denominated a franchise tax and although we have said in another connection (*People ex rel. Alpha P. C. Co. v. Knapp*, supra, p. 57) that "the tax imposed upon this franchise must be held in practical operation to be a tax upon the income. This tax is equivalent to a tax upon relator's income," it is primarily a tax levied for the privilege of doing business in the state. Relator's business, although unprofitable in the year 1918, was extensive in its nature.

When in the practical workings of the statute by virtue of circumstances, a year's business produces no net income, is so much of the statute as provides for a comparison of the total assets with the assets in the state of New York as a basis for the computation of the sum on which the tax is to be computed basically a tax on property outside the state because the income out of which this tax is paid for this year by this corporation is property outside the state of New York and as such beyond the jurisdiction of the state?

We think the question should be answered in the negative. Such a method of levying a franchise tax is not inherently arbitrary. It is based on a comparison of the total assets with the assets in New York. Nor has its application to this corporation produced an unreasonable result in the moderate sum assessed in lieu of all other taxes on its personal property, capital stock or income. It would on the contrary seem unreasonable thus to exempt relator from taxation on its large though unprofitable business in this state. (*Underwood Typewriter Co. v. Chamberlain*, 254 U. S. 113.) The statute attaches a value to the privilege of doing business in this state based not on the net income produced in this state merely but on the proportion of its capital employed here. Generally speaking, such a franchise tax is not unfair. Like other tax laws, it may in individual cases work hardship and inequality, not because the mode of measurement necessarily attaches a value to and imposes a tax upon tangible property beyond the jurisdiction of the state and thereby arbitrarily and unreasonably increases the local burden by a resort to foreign assets as in the *Alpha Case* (supra) but because the fortunes of trade and business fluctuate with changing laws and customs and at times throw the burden of the tax upon the going concern as a whole and not on the local branch.

The order appealed from should be affirmed, with costs.

78 Hiscock, Ch. J., Hogan, Cardozo, McLaughlin, Crane and
Andrews, JJ., concur.
Order affirmed.

STATE OF NEW YORK,
County of Albany, Clerk's Office, ss:

I, Luther C. Warner, Clerk of the said County, and also Clerk of the Supreme and County Court, being Courts of Record held therein, do hereby certify that I have compared the annexed copy opinion with the original thereof filed in this office on the 11 day of Jan., 1922, and that the same is a correct transcript therefrom, and of the whole of said original.

In testimony whereof, I have hereunto set my hand and affixed my official seal this 11 day of Jan., 1922.

[Seal Albany County, July, 1847.]

L. C. WARNER,
Clerk.

79 [Endorsed:] Court of Appeals, State of New York. The People of the State of New York ex rel. Bass, Ratcliff & Gretton, Limited, Appellant, against State Tax Commission, respondent. Opinion. Office of Albany County Clerk. 1922, Jan. 11, P. M. 3:31. Albany, N. Y.

80 STATE OF NEW YORK, ss:

Court of Appeals.

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 18th day of October in the Year of Our Lord one thousand nine hundred and twenty-one, before the Justices of said Court.

Witness the Hon. Frank H. Hiscock, Chief Judge Presiding.
R. M. BARBER,
Clerk.

Remittitur. October 19, 1921.

THE PEOPLE, &C., ex Rel. BASS, RATCLIFF & GRETTON, LTD., Applt.,
ag'st

STATE TAX COMMISSION, Respt.

Be it remembered, that on the 16th day of September in the year of our Lord One thousand nine hundred and twenty-one Bass, Ratcliff & Gretton, Ltd., appellant in this cause, came here into the Court of Appeals, by Olney & Comstock, its attorneys, and filed in said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the Third Judicial Department. And said State Tax Commission, the respondent in said cause, afterward appeared in said Court of Appeals by Charles D. Newton, Attorney General.

81 Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, the said Court of Appeals having heard this cause argued by Mr. Robert C. Beatty, of counsel for the appellant, and by Mr. C. T. Dawes, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed with costs.

And it was also further ordered that the record aforesaid, and the proceedings in this court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said order be affirmed with costs, as aforesaid,

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, be it given in the premises, are by said Court of Appeals remitted into the Supreme Court of the State of New York, before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the Supreme Court before the Justices thereof, etc.

R. M. BARBER,
*Clerk of the Court of Appeals
of the State of New York.*

82

Court of Appeals, Clerk's Office.

Albany, Oct. 19th, 1921.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

[SEAL.]

R. M. BARBER,
Clerk.

STATE OF NEW YORK,
County of Albany,
Clerk's Office, ss:

I, Luther C. Warner, Clerk of the said County, and also Clerk of the Supreme and County Courts, being Courts of Record held therein, do hereby certify that I have compared the annexed copy Remittitur with the original thereof filed in this office on the 26 day of Nov., 1921, and that the same is a correct transcript therefrom, and of the whole of said original.

In testimony whereof, I have hereunto set my hand and affixed my official seal this 11 day of Jan., 1922.

[Seal Albany County, July, 1847.]

L. C. WARNER,
Clerk.

83 At a Special Term of the Supreme Court of the State of New York Held in and for the County of Albany, at the Court House, in the City of Albany, on the 26th Day of November, 1921.

Present: Hon. Harold J. Hinman, Justice.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of BASS,
RATCLIFF & GRETTON, LIMITED, Relator,

against

STATE TAX COMMISSION, Respondent.

The relator above named having heretofore duly obtained an order granting a Writ of Certiorari to review the determination of the State Tax Commission in assessing a tax against the said relator under Article 9A of the Tax Law for the taxable year 1918, and a return having been filed to the said Writ by the State Tax Commission and said proceedings having come on for argument at a Term of the Appellate Division, Third Department, commencing on the 3rd day of May 1921, and the said Appellate Division by an order entered in the office of the Clerk of the County of Albany on the 7th day of July 1921, having confirmed the determination of the State Tax Commission against the relator with \$50.00 costs and disbursements, and the relator having thereafter appealed to the Court of Appeals of the State of New York from said order and the Court of Appeals having sent hither its remittitur under date of October 19, 1921, by which it appears that the Court of Appeals has affirmed the said order of the Appellate Division with costs and has remitted its judgment to this Court to be enforced according to law.

Now, on reading and filing the remittitur of the Court of
84 Appeals herein, and on motion of Charles D. Newton, Attorney-General, Attorney for the State Tax Commission, it is

Ordered, That the said order and judgment of the Court of Appeals be, and the same hereby are, made the order and judgment of this Court and the determination of the State Tax Commission dated July 28, 1920, is hereby in all respects confirmed, and that judgment be entered to the above effect with costs and disbursements to be taxed against the relator.

HAROLD J. HINMAN,

Jus. Sup. Ct.

STATE OF NEW YORK,
County of Albany,
Clerk's Office, ss:

I, Luther C. Warner, Clerk of the said County, and also Clerk of the Supreme and County Courts, being Courts of Record held therein, do hereby certify that I have compared the annexed copy Order on Remittitur with the original thereof filed in this office on the 26 day of Nov. 1921, and that the same is a correct transcript therefrom, and of the whole of said original.

In testimony whereof, I have hereunto set my hand and affixed my official seal this 11 day of Jan. 1922.

[Seal of Albany County.]

L. C. WARNER,
Clerk.

85 SIR:

Take notice that the within is a copy of an order duly filed and entered in the office of the Clerk of Albany County, on the 26th day of November 1921.

Yours, etc.,

CHARLES D. NEWTON,
Attorney-General.

To Attorney for — — —.
Nov. 26-21.

[Endorsed:] Supreme Court, Albany County. The People of the State of New York ex rel. Bass, Ratcliff & Gretton, Limited, Relator, against State Tax Commission, Respondent. Copy. Order on Remittitur of the Court of Appeals. Charles D. Newton, Attorney-General, Attorney for Respt. Capitol, Albany, N. Y.

86

Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of BASS,
RATCLIFF & GRETTON, LIMITED, Relator,
against

STATE TAX COMMISSION, Respondent.

The relator, above named, having heretofore obtained an order granting a Writ of Certiorari to review the determination of the State Tax Commission in assessing a tax against the said relator under Article 9A of the Tax Law, for the taxable year 1918, and a return having been filed to the said Writ by the said State Tax Commission and said proceeding having come on for argument at a Term of the Appellate Division, Third Department, commencing on the 3rd day of May, 1921, and the said Appellate Division by an order entered in the office of the Clerk of the County of Albany on the 7th day of July, 1921, having confirmed the determination of the State Tax Commission against the relator with \$50.00 costs and disbursements, and the relator thereafter having appealed to the Court of Appeals of the State of New York from said order, and the Court of Appeals having sent hither its remittitur under date of October 19, 1921, by which it appears that the Court of Appeals has affirmed the said order of the Appellate Division, with costs, and has remitted its judgment to this Court to be enforced according to law, and this Court by an order duly entered herein having ordered that the said judgment and order of the Court of Appeals be made the order and judgment of this court, and the costs of the respondent,

State Tax Commission, in the Appellate Division and in the Court of Appeals having been duly taxed at the sum of \$191.25, as per Bill of Costs filed with the Clerk of this Court on this date.

Now, on motion of Charles D. Newton, Attorney-General,
87 Attorney for the respondent, the State Tax Commission, it is

Adjudged, That the said order and judgment of the Court of Appeals be and the same hereby are made the order and judgment of this Court, and it is further

Adjudged, That the State Tax Commission recover from the relator costs in the Appellate Division and in the Court of Appeals, as per Bill of Costs filed herein in the sum of \$191.25.

L. C. WARNER,
Clerk.

STATE OF NEW YORK,
County of Albany,
Clerk's Office, ss.:

I, Luther C. Warner, Clerk of the said County, and also Clerk of the Supreme and County Courts, being Courts of Record held therein, Do Hereby Certify that I have compared the annexed copy Judgment on Remittitur with the original thereof filed in this office on the 26 day of Nov. 1921 and that the same is a correct transcript therefrom, and of the whole of said original.

In testimony whereof, I have hereunto set my hand and affixed my official seal this 11 day of Jan. 1922.

[Seal of Albany County.]

L. C. WARNER,
Clerk.

88 SIR:

Take notice that the within is a copy of a Judgment duly filed and entered in the office of the Clerk of Albany County, on the 26th day of November, 1921.

Yours, etc.,

CHARLES T. NEWTON,
Attorney-General.

To Attorney for ———.

[Endorsed:] Supreme Court, Albany County. The People of the State of New York, ex rel. Bass, Ratcliff & Gretton, Limited, Relator, against State Tax Commission Respondent. Copy. Judgment on Remittitur of Court of Appeals. Charles D. Newton, Attorney-General, Attorney for Respt., Capitol, Albany, N. Y.

89

Court of Appeals, State of New York.

PEOPLE OF THE STATE OF NEW YORK on the Relation of BASS, RAT-
CLIFF & GRETTON, LIMITED, Plaintiff-in-Error,

against

STATE TAX COMMISSION, Defendant-in-Error.

Petition for Writ of Error.

To the Honorable Frank H. Hiscock, Chief Justice of the Court of
Appeals of the State of New York:

The petition of Bass, Ratcliff & Gretton, Limited, respectfully
shows:

First. That, on or about the 18th day of October, 1921, the Court
of Appeals of the State of New York made and entered a final order
and judgment herein, affirming the final order of the Appellate Di-
vision of the State of New York, Third Department, which order of
the Appellate Division confirmed the determination of the State Tax
Commission of the State of New York against the plaintiff-in-error,
and which final order of the Appellate Division was entered in the
office of the Clerk of the County of Albany on the 7th day of Sep-
tember, 1921. Thereafter, on or about the 26th day of November,
1921, the records and proceedings in said cause having been re-
mitted to the Supreme Court of the State of New York in and for
the County of Albany, the said final order and judgment of the Court
of Appeals were made and entered as the final judgment of the said
Supreme Court.

90 Second. The said Court of Appeals of the State of New
York is the highest court of the State of New York in which
a decision could be had in said cause.

Third. By the said final order and judgment entered in the said
Supreme Court of the State of New York and the proceedings had
prior thereto in this cause, your petitioner has been denied the guar-
anty and protection provided for by the Constitution of the United
States, and a right, privilege, or immunity especially set up and
claimed by your petitioner under the said Constitution has been de-
nied and the validity of an act of the legislature of the State of New
York in imposing a tax upon the plaintiff's property, which was
drawn in question on the ground of its being repugnant to the Con-
stitution of the United States was upheld, all of which has been made
to appear on the record of the said cause, as will more fully appear
by an inspection of the said record and of the assignment of errors
filed with this petition, and from the brief submitted on behalf of
the petitioner to the said Appellate Division and Court of Appeals.

Fourth. A copy of the said printed record and copies of briefs sub-
mitted by your petitioner to the said Appellate Division and the
Court of Appeals are submitted herewith. The federal questions

above referred to appear in all of the said briefs, and the petition for a writ of certiorari expressly alleges:

“Your petitioner further shows and alleges that the assessment of the said tax and determination by the said State Tax Commission, as hereinabove set forth, is erroneous and inequitable, for the reasons that the law under which said tax is assessed is in violation of the Constitution of the United States and the Constitution of the State of New York, and in that, among other things, it deprives the persons so taxed of their property without due process of law and without just compensation; that it denies to said persons the equal protection of the laws and attempts illegally to impose a tax upon a tax imposed and assessed by the Government of the United States, and imposes an unequal tax and illegally discriminates against certain of the persons so taxed and in favor of certain other persons so taxed; and upon the further ground that, inasmuch as your petitioner is a foreign corporation organized under the laws of England, that the said tax is in violation of the comity of nations; that the assessment and determination of the State Tax Commission fails to give consideration to the business and property of the corporation not employed in the United States or the State of New York, and upon the further ground that the said assessment and determination and the said tax is computed upon a part of the income of your petitioner represented by its earnings made outside of the United States of America and is, therefore, in contravention of the directions and provisions of the Act in question in that the said tax and assessment and determination are not based upon the amount of income reported to the Federal Government of the United States under the Income Tax Law of the United States, and are not computed upon the basis of your petitioner's net income, upon which income your petitioner was required to pay a tax to the United States.”

Wherefore your petitioner prays that a writ of error may issue in the Supreme Court of the United States to the Supreme Court of the State of New York for the correction of the errors and the reversal of the final judgment so complained of, that a transcript of the record, proceedings, and papers in this cause duly authenticated may be sent to the Supreme Court of the United States, and that your petitioner may have such other and further relief in the premises as may be just.

Dated, New York, December 14th, 1921.

BASS, RATCLIFF & GRETTON,
LIMITED,

By CHARLES H. TAYLOR,
Agent and Attorney in Fact.

OLNEY & COMSTOCK,
Attorneys for the Petitioner.

68 William Street,
Borough of Manhattan,
New York City.

STATE OF NEW YORK,
County of Albany,
Clerk's Office, ss:

I, Luther C. Warner, Clerk of the said County, and also Clerk of the Supreme and County Courts, being Courts of Record held therein, do hereby certify that I have compared the annexed copy Petition with the original thereof filed in this office on the 11 day of Jan. 1922, and that the same is a correct transcript therefrom, and of the whole of said original.

In testimony whereof, I have hereunto set my hand and affixed my official seal this 11 day of Jan., 1922.

[Seal of Albany County.]

L. C. WARNER, *Clerk.*

93 STATE OF NEW YORK,
County of New York, ss:

Charles H. Taylor, being duly sworn, deposes and says that he is the Agent and Attorney in Fact of Bass, Ratcliff & Gretton, Limited, the petitioner herein; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

This verification is made by deponent and not by Bass, Ratcliff & Gretton, Limited, for the reason that Bass, Ratcliff & Gretton, Limited, is a foreign corporation, of which deponent is an officer, to wit, its Agent and Attorney in Fact; that all the material allegations of the petition are within the knowledge of the deponent, having kept informed of all charges and attempted charges for taxes and assessments on the property of the petitioner.

CHARLES H. TAYLOR.

Sworn to before me this 14th day of December, 1921.

[SEAL.]

MADGE HARTUNG,

Notary Public, Kings County, No. 405.

Kings County Register No. 9165.

Certificate filed New York County No. 459.

New York Register No. 3351.

94 [Endorsed:] Court of Appeals, State of New York. People of the State of New York on the Relation of Bass, Ratcliff & Gretton, Limited, Plaintiff-in-Error, against State Tax Commission, Defendant-in-Error. Petition for Writ of Error. Olney & Comstock, Attorneys for Plaintiff-in-Error, No. 68 William Street, New York, N. Y. Office of Albany County Clerk, 1922, Jan. 11, P. M., 3.30. Albany, N. Y. Jan. 11, '22.

Read on application Dec. 23, 1921.

F. H. H.,
Chf. Judge.

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Court of Appeals, State of New York.

PEOPLE OF THE STATE OF NEW YORK on the Relation of BASS,
RATCLIFF & GRETTON, LIMITED, Plaintiff-in-Error,

against

STATE TAX COMMISSION, Defendant-in-Error.

Order of Allowance of Writ of Error.

The above entitled matter coming on to be heard on the petition of Bass, Ratcliff & Gretton, Limited, for a writ of error from the Supreme Court of the United States to the Supreme Court of the State of New York in and for the County of Albany, and upon the examination of said petition and the record of said matter, and desiring to give the petitioner an opportunity to present to the Supreme Court of the United States the questions presented by the record in said matter, and a bond having been furnished by the plaintiff-in-error conditioned according to law, in the sum of five hundred (\$500) dollars;

Now therefore, it is ordered that a writ of error be, and the same hereby is, allowed to the Supreme Court of the State of New York in and for the County of Albany, and that a true copy of the record, assignment of errors, and all proceedings in this cause be transmitted to the Supreme Court of the United States duly certified according to law, in order that said Court may inspect the same and take such action thereon as it deems proper according to the law.

Dated, Albany, N. Y., December 23, 1921.

FRANK H. HISCOCK.

Chief Judge of the Court of Appeals.

96 [Endorsed:] Court of Appeals, State of New York. People of the State of New York on the Relation of Bass, Ratcliff & Gretton, Ltd., Plaintiff-in-Error, against State Tax Commission, Defendant-in-Error. Order of Allowance of Writ of Error. Olney & Comstock, Attorneys for Plaintiff-in-Error. No. 68 William Street, New York, N. Y. Office of Albany County Clerk, 1922, Jan. 11. P. M. 3.26. Albany, N. Y. Jan. 11-22.

97 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable Justices of the Supreme Court of the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the final judgment or order, which is in the said Supreme Court of the State of New York, in and for the County of Albany, upon a remittitur from the Court of Appeals, the same being the highest court of law or equity of said state in which a decision could be had in the said suit between People of the State of New York on the Relation of Bass, Ratcliff & Gretton, Limited, plaintiff-in-error, and

State Tax Commission, defendant-in-error, wherein was drawn in question the validity of a statute of, or an authority exercised under, said state on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of their validity; or wherein a title, right, privilege or immunity was claimed under the Constitution of the United States, and the decision was against the title, right, privilege or immunity especially set up or claimed under said constitution, a manifest error hath happened to the great damage of the said Bass, Ratcliff & Gretton, Limited, as by its petition appears. We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning
 98 the same to the Supreme Court of the United States, together with this writ, so that you have the same in said Supreme Court of the United States at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States ought to be done.

Witness, the Honorable William H. Taft, Chief Justice of the United States, this 27th day of December, in the year of our Lord one thousand nine hundred and twenty-one.

[Seal of the United States District Court, N. Dist. of New York.]

C. W. HIGGISON,
*Clerk of the District Court of the United
 States for the Northern District of New York.*

Allowed by:

FRANK H. HISCOCK,
*Chief Judge of the Court of Appeals
 of the State of New York.*

99 [Endorsed:] Supreme Court of the United States.
 People of the State of New York on the Relation of Bass, Ratcliff & Gretton, Ltd., Plaintiff-in-Error, against State Tax Commission, Defendant-in-Error. Writ of Error. Olney & Comstock, Attorneys for Plaintiff-in-Error. No. 68 William Street, New York. N. Y. Office of Albany County Clerk, 1922, Jan. 11, P. M. 3.26. Albany, N. Y. Jan. 11-22.

100

Court of Appeals, State of New York.

PEOPLE OF THE STATE OF NEW YORK on the Relation of BASS,
RATCLIFF & GRETTON, LIMITED, Plaintiffs-in-Error.

against

STATE TAX COMMISSION, Defendant-in-Error.

Know all men by these presents:

That we, Bass, Ratcliff & Gretton, Limited, as Principal, and the United States Fidelity and Guaranty Company, a corporation organized under the laws of the State of Maryland, having an office and usual place of business at No. 75 William Street, in the Borough of Manhattan, City of New York, as Surety, are held and firmly bound unto the State Tax Commission, in the full and just sum of five hundred (\$500.00) Dollars, lawful money of the United States of America, to be paid to the said the State Tax Commission, to which payment well and truly to be made, we bind ourselves our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed, with our seals and dated this 10th day of December, 1921.

Whereas, on the 18th day of October, 1921 the Court of Appeals of the State of New York entered its order and judgment against the Plaintiff-in-error, affirming the final order of Appellate Division of the State of New York, Third Department in the above entitled matter, and the said Bass, Ratcliff & Gretton Limited obtained a Writ of Error and filed a copy thereof in the Clerk's Office of said Court to reverse the said final order of judgment and a citation directed to the said Bass, Ratcliff & Gretton, Limited citing and admonishing them to be and appear at the Supreme Court of the United

101 States, at Washington, within 30 days from the date thereof.

Now, therefore, the Condition of the above Obligation is such, that if the said Bass, Ratcliff & Gretton, Limited shall prosecute their writ of error to effect, and answer all damages and costs if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

BASS, RATCLIFF & GRETTON, LIMITED,
By CHARLES H. TAYLOR,

Agent and Attorney-in-Fact.

[SEAL.] UNITED STATES FIDELITY AND GUAR-
ANTY COMPANY,

By S. FRANK HEDGES,

Attorney-in-Fact.

Attest:

ADOLPHUS A. JACKSON,

Attorney-in-Fact.

Signed, and Delivered in the Presence of:

ROBERT C. BEATTY.

STATE OF NEW YORK,
County of New York, ss:

On this 14th day of December, 1921, before me personally appeared Charles H. Taylor, agent and attorney-in-fact of Bass, Ratcliff & Gretton, Limited with whom I am personally acquainted, who, being by me duly sworn said: That he resides in the State of New York that he is agent and attorney-in-fact of Bass, Ratcliff & Gretton, Limited the corporation described in and which executed the above instrument that he knows the corporate seal of said corporation; that no seal is affixed to the within instrument because such seal is not in the United States, and that he signed his name thereto as agent and attorney-in-fact by authority from the Board of Directors of said corporation.

[SEAL.]

MADGE HARTUNG,
Notary Public, Kings County, No. 405.

Kings County Register No. 3165.
Certificate filed New York County No. 459.
New York Register No. 3351.

STATE OF NEW YORK,
County of Albany,
Clerk's Office, ss:

I, Luther C. Warner, Clerk of the said County, and also Clerk of the Supreme and County Courts, being Courts of Record held therein, do hereby certify that I have compared the annexed copy Appeal Bond with the original thereof filed in this office on the 11 day of Jan., 1922, and that the same is a correct transcript therefrom, and of the whole of said original.

In testimony whereof, I have hereunto set my hand and affixed my official seal this 11 day of Jan. 1922.

[SEAL.]

L. C. WARNER,
Clerk.

102 STATE OF NEW YORK,
County of New York, ss:

On the 10th day of December, 1921, before me personally came S. Frank Hedges, to me known, who, being by me duly sworn, did depose and say that he resides in the City of New York; that he is Attorney-in-fact of the United States Fidelity and Guaranty Company, the corporation described in, and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order; and that the said Company has received from the Superintendent of Insurance of the State of New York a certificate of solvency and of its sufficiency as surety or guarantor, under Chapter 182 of the Insurance Law of the State

of New York as amended by Chapter 182 of the Laws of 1913, and that such certificate has not been revoked. And the said S. Frank Hedges further said that he is acquainted with Adolphus A. Jackson and knows him to be the Attorney-in-fact of said Company; that the signature of said Adolphus A. Jackson, subscribed to the within instrument, is in the genuine handwriting of said Adolphus A. Jackson, and was subscribed thereto by like order of said Board of Directors, and in the presence of him the said S. Frank Hedges.

JAMES A. STARR,
Commissioner of Deeds for the City of New York.

Term expires November 15, 1923.

Certificates filed in Richmond County and the following Counties:
County Clerks' Nos.; New York 495, Kings 152, Queens 394C,
Bronx 59.

Registers' Nos.; New York 23208, Kings 3147, Bronx 3058.

At a special meeting of the Board of Directors of the United States Fidelity and Guaranty Company, held at the office of the Company, in the City of Baltimore, State of Maryland, on the 2nd day of June, A. D. 1921, the following resolution was unanimously adopted:

Resolved, That Alonzo Gore Oakley or Edw. R. Lewis or Adolphus A. Jackson or William H. Estwick or Gilman Ashburner or A. Van Tambacht or J. Frank Supplee or E. G. Babcock or C. D. Marsac or S. Frank Hedges or Charles E. Finken or Kern J. Mullen or Albert J. Rowland or Kenneth H. Wood or William S. Hering or Edward J. O'Shaughnessy, Attorneys-in-fact of this Company in the State of New York, be and they hereby are, and each of them is authorized and empowered to execute and deliver and to attach the seal of the Company to any and all bonds and undertakings for, or on behalf of the Company, in its business guaranteeing the fidelity of persons holding places of public or private trust and the performance of contracts other than insurance policies, and executing or guaranteeing bonds and other undertakings, required or permitted in all actions or proceedings or by law required, including co-suretyship and reinsurance agreements, and all other bonds, undertakings or guarantees of whatsoever nature not specifically covered by the foregoing authority; such bonds, undertakings and agreements, however, to be attested in every instance by one other of the persons above named, as occasion may require, provided, that if such bonds, undertakings and agreements are not executed by either Alonzo Gore Oakley or Edw. R. Lewis or Adolphus A. Jackson or William H. Estwick, then and in such event, said bonds, undertakings and agreements shall be attested by either the said Alonzo Gore Oakley or Edw. R. Lewis or Adolphus A. Jackson or William H. Estwick; and the aforesaid attorneys-in-fact are, and each of them is hereby authorized and empowered to certify a copy of this resolution under the seal of this Company.

STATE OF NEW YORK,

County of New York, ss:

I, S. Frank Hedges, Attorney-in-fact of the United States Fidelity and Guaranty Company, have compared the foregoing resolution with the original thereof, as recorded in the minute book of the said Company, and do hereby certify that the same is a true and correct transcript therefrom, and of the whole of said original resolution.

Given under my hand and the seal of the Company, at the City of New York, this 10th day of December, 1921.

S. FRANK HEDGES,
Attorney-in-fact.

United States Fidelity and Guaranty Company,
Baltimore, Md.

At the Close of Business September 30, 1921.

Commenced Business August 1, 1896.

Par value.	<i>Assets.</i>	Market value.
\$7,259,250.00	Government Bonds.....	\$6,975,363.16
5,637,271.15	Baltimore City and other Municipal, State and County Bonds..	5,060,133.86
2,454,600.00	Railroad and Equipment Bonds..	2,087,044.75
255,000.00	Electric Railway Bonds.....	184,500.00
4,075,658.22	Public utility and Miscellaneous Bonds	3,695,670.75
305,890.00	Bank and Trust Company Stocks..	593,607.00
169,725.00	Railroad Stocks.....	350,568.50
491,000.00	Miscellaneous Stocks.....	131,416.00
100,000.00	Lawyers Surety Co. Stock, represented by \$150,000 New York City Bonds deposited with the Superintendent of Insurance of the State of New York, and other assets.....	123,500.00
<hr/> \$20,748,394.37	Total Bonds and Stocks—Market Values September 30th, 1921..	<hr/> \$19,201,804.02
Home Office Property appraised by Insurance Department of Maryland.....		750,000.00
New York Property, appraised by Insurance Department of New York.....		917,866.91
Other Property appraised by Insurance Department of Maryland.....		581,280.85

Par value.	Market value.
Loans secured by pledge of Collaterals.....	47,896.54
Loans secured by Mortgages.....	47,500.00
Cash on Hand and in Depositories.....	3,061,026.94
Premiums in course of collection, not more than three months due.....	6,900,360.01
Deposits with Workmen's Compensation Reinsur- ance Bureau.....	370,242.01
Interest due and accrued.....	303,188.89
Due for Subscriptions, Department Guaranteed At- torneys.....	74,451.96
Other Assets.....	98,379.37
	<hr/>
	\$32,353,997.50

Liabilities.

Capital Stock paid in cash.....	\$4,500,000.00
Due for Return Premiums and Reinsurance.....	106,947.40
Funds held under Reinsurance Treaties.....	89,711.63
Reserve for 1921 Taxes and Expenses in Transit...	420,118.75
Commissions accrued on uncollected premiums....	1,253,848.81
Premium Reserve Computed in accordance with Requirements of New York Insurance De- partment.....	\$11,213,660.95
Reserve for Claims Admitted and not Admitted, all Depart- ments, in accordance with New York Laws.....	10,754,828.83
Surplus.....	4,014,881.13
	<hr/>
	25,983,370.91
	<hr/>
	\$32,353,997.50

STATE OF NEW YORK,
County of New York, ss:

S. Frank Hedges, being duly sworn, says: that he is the Attorney-in-fact of the United States Fidelity and Guaranty Company, and that, to the best of his knowledge and belief, the foregoing is a true and correct statement of the financial condition of said Company, as of September 30, 1921, and that the financial condition of said Company is as favorable now as it was when such statement was made.

S. FRANK HEDGES.

Subscribed and sworn to before me this 10th day of December, 1921.

JAMES A. STARR,
Commissioner of Deeds for the City of New York.

Term expires November 15, 1923.

Certificates filed in Richmond County and the following Counties:
County Clerk's Nos.; New York 495, Kings 152, Queens 3246,
Bronx 59.

Registers' Nos.; New York 23208, Kings 3147, Bronx 3058.
103 [Endorsed:] County Clerk's File No. —. Court of
Appeals: State of New York. People of the State of New
York on the Relation of Bass, Ratcliff & Gretton, Limited, Plaintiff-
in-error against State Tax Commission, Defendant-in-error. Appeal
Bond. Office of Albany County Clerk, Albany, N. Y. 1922, Jan.
11, P. M. 3.30. Jan. 11-22. United States Fidelity and Guaranty
Co. 47 Cedar Street, New York City, surety.

The within undertaking is approved as to form and as to the
sufficiency of the surety.

FRANK HISCOCK,
Chief Judge Court of Appeals.

104 Court of Appeals, State of New York.

PEOPLE OF THE STATE OF NEW YORK on the Relation of BASS,
RATCLIFF & GRETTON, LIMITED, Plaintiff-in-Error.

against

STATE TAX COMMISSION, Defendant-in-Error.

Assignment of Errors.

Now comes the above named Bass, Ratcliff & Gretton, Limited
and, in connection with the petition for writ of error by it, herewith
says that, in the records and proceedings in this cause, and in the
final judgment made and entered herein on the 26th day of Novem-
ber, 1921, by the Supreme Court of the State of New York in and
for the County of Albany upon the remittitur from the Court of
Appeals of the State of New York, there is manifest error, to wit:

First. The Court of Appeals of the State of New York and the
Appellate Division of the Third Department erred in affirming the
determination of the State Tax Commission and in refusing to
vacate the tax imposed against the above named Bass, Ratcliff &
Gretton, Limited, on the ground that the said tax and law under
which it was assessed is unconstitutional as in violation of Section
2 of Article 4 and the Fourteenth Amendment, and Section 8 of
Article 1 of the Constitution of the United States.

Second. The Court erred in not adjudging said tax and the
Corporation Tax Law of the State of New York under which
105 it was assessed and imposed against the above named Bass,
Ratcliff & Gretton, Limited, unconstitutional as in violation
of Section 2 of Article 4 and the Fourteenth Amendment, and
Section 8 of Article 1 of the Constitution of the United States, upon
the following grounds:

(a) It taxes a large part of the plaintiff-in-error's net income earned in its business and received by it wholly without the State of New York, and taxes a large amount of its property located without the State of New York.

(b) It takes a proportionate amount of the net income of a foreign corporation determined by an arbitrary and set rule prescribed in said statute and having no relation to the actual net income of such corporation actually earned in the State of New York, nor the value of the income producing property in the State of New York, and thereby the plaintiff-in-error is unjustly taxed upon a large amount of its net income, all of which so taxed was earned and received wholly in foreign countries.

(c) It directly burdens and lays a tax upon interstate commerce.

Third. The Court erred in not holding that the said tax, even though considered as a franchise tax, is unconstitutional as being based upon property and income therefrom without the State of New York.

Fourth. The Court erred in holding that such tax is constitutional, although it is based on an allocation which includes the value of shares of stocks of other corporations owned by Bass, Ratcliff & Gretton, Limited, the plaintiff-in-error, to the extent only of ten (10%) per cent of its tangible real and personal property.

Wherefore the said Bass, Ratcliff & Gretton, Limited, prays
106 that the final order and judgment in the said Supreme Court of the State of New York entered in the office of the Clerk of the County of Albany on the 26th day of November, 1921, pursuant to the said remittitur of the said Court of Appeals of the State of New York be reversed and that judgment be rendered in favor of the plaintiff-in-error and annulling the said judgment and canceling the said tax and lien sought to be imposed upon its property, and for such other and further relief as may be just and proper in the premises, with costs in all the courts.

OLNEY & COMSTOCK.
Attorneys for Plaintiff-in-Error.

68 William Street,
Borough of Manhattan,
City of New York.

STATE OF NEW YORK,
County of Albany,
Clerk's Office, ss:

I, Luther C. Warner, Clerk of the said County, and also Clerk of the Supreme and County Courts, being Courts of Record held therein, do hereby certify that I have compared the annexed copy — Assignment of Error with the original thereof filed in this office on the 11

day of Jan., 1922 and that the same is a correct transcript therefrom, and of the whole of said original.

In testimony whereof, I have hereunto set my hand and affixed my official seal this 11 day of Jan., 1922.

[SEAL.]

L. C. WARNER,
Clerk.

107 [Endorsed:] Court of Appeals, State of New York.
People of the State of New York on the Relation of Bass, Ratcliff & Gretton, Limited, Plaintiff-in-Error, against State Tax Commission, Defendant-in-Error. Assignment of Errors. Olney & Comstock, Attorneys for Plaintiff-in-Error. No. 68 William Street, New York, N. Y. Office of Albany County Clerk, Albany, N. Y. 1922, Jan. 11, P. M. 3.30.

Read on Application, Dec. 23, 1921.

F. H. H.
Chf. Judge.

108 Supreme Court of the United States.

PEOPLE OF THE STATE OF NEW YORK on the Relation of BASS, RATCLIFF & GRETTON, LTD., Plaintiff-in-Error,
against
STATE TAX COMMISSION, Defendant-in-Error.

I, Charles D. Newton, Attorney General of the State of New York and Attorney of record for the defendant-in-error in the above entitled suit, hereby acknowledge due service of the herein citation and enter an appearance in the Supreme Court of the United States.

Dated, Albany, N. Y., December 28, 1921.

CHARLES D. NEWTON,
Attorney General of the State of New York,
Attorney for the Defendant-in-Error.

109 UNITED STATES OF AMERICA, ss:

To State Tax Commission, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the County of Albany, State of New York, wherein the People of the State of New York on the relation of Bass, Ratcliff & Gretton, Ltd., is plaintiff in error and you are defendant in error, to show cause, if any there be, why the final judgment or order rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Frank H. Hiscock, Chief Judge of the Court of Appeals of the State of New York, this 27th day of December, in the year of our Lord one thousand nine hundred and twenty-one.

FRANK H. HISCOCK,
*Chief Judge of the Court of Appeals
of the State of New York.*

110 [Endorsed:] Supreme Court of the United States. People of the State of New York on the Relation of Bass, Ratcliff & Gretton, Limited, Plaintiff-in-Error, against State Tax Commission, Defendant-in-Error. Citation. Olney & Comstock, Attorneys for Plaintiff-in-Error, No. 68 William Street, New York, N. Y. 1922. County Clerk's Case No. 5303. Office of Albany County Clerk, 1922, Jan. 4, A. M. 9.07. Albany, N. Y.

111 New York Supreme Court, County of Albany.

PEOPLE OF THE STATE OF NEW YORK on the Relation of BASS,
RATCLIFF & GRETTON, LIMITED, Plaintiff-in-Error,
against

STATE TAX COMMISSION, Defendant-in-Error.

STATE OF NEW YORK,
County of Albany, ss:

I, L. C. Warner, Clerk of the Supreme Court of the State of New York, in and for the County of Albany, and Clerk of the County of Albany, pursuant to a writ of error directed to the Justices of the Supreme Court of the State of New York, in and for the County of Albany, which said writ was allowed by Honorable Frank H. Hiscock, Chief Judge of the Court of Appeals of the State of New York, and signed by the Clerk of the United States District Court, for the Northern District of New York, do hereby certify that the writing hereto attached is a true, complete and perfect copy of the record, assignment of errors, petition and bond, and all proceedings entitled People of the State of New York on the Relation of Bass, Ratcliff & Gretton, Limited, plaintiff-in-error, against State Tax Commission, defendant-in-error, as the same remains on file and on record in said case in my office; that attached to said papers is the writ of error, allowance of writ of error, citation with proof of service thereof, all filed in the office of this court and the same are the originals thereof.

112 In testimony whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of Albany County this 11 day of Jan., in the year of our Lord, one thousand nine hundred and twenty-two.

[Seal of County of Albany.]

L. C. WARNER,
Clerk.

113 Supreme Court of the United States, October Term, 1921.

#714.

PEOPLE OF THE STATE OF NEW YORK on the Relation of BASS,
RATCLIFF & GRETTON, LIMITED, Plaintiff-in-Error,

against

STATE TAX COMMISSION, Defendant-in-Error.

It is hereby stipulated that, the Court of Appeals of the State of New York having added to its opinion now officially reported in the above case a citation which was not contained in the certified copy furnished by the official reporter of the Court of Appeals of the State of New York, which certified copy was included in the certification of the record herein, such citation be added to the record heretofore certified to the Supreme Court of the United States by the Clerk of the County of Albany, State of New York; that such officially reported opinion is contained in 232 N. Y. 42, and immediately after the citation of Underwood Typewriter Company vs. Chamberlain, 254 U. S., 113, the additional citation of Postal Telegraph-Cable Co. vs. City of Fremont, 255 U. S., 124, 127, should be added; and that the Clerk of the Supreme Court of the United States be requested to add the foregoing additional citation, so officially reported, to the printed record in this case.

Dated, New York, February 1, 1922.

OLNEY & COMSTOCK,

By ROBERT C. BEATTY,
Attorneys for Plaintiff-in-Error.
CHARLES D. NEWTON,

Attorney General, Attorney for Defendant-in-Error.
CLAUDE T. DAWES,

Of Counsel for Defendant-in-Error.

114 [Endorsed:] File No. 28,669. Supreme Court U. S., October Term, 1921. Term No. 714. Bass, Ratcliff & Gretton P. E., vs. State Tax Commission. Stipulation of counsel and addition to record. Filed Feb. 9, 1922. Chas. D. Newton, Attorney.

Endorsed on cover: File No. 28,669. New York Supreme Court Term No. 714. Bass, Ratcliff & Gretton, Limited, plaintiff in error, vs. State Tax Commission. Filed January 24th, 1922. File No. 28,669.